WIK-Consult • Final Report

Study for the European Commission, Directorate General for Internal Market and Services

# Main Developments in the Postal Sector (2010-2013)


Authors:
Alex Kalevi Dieke (Project Manager)
Christian Bender
James I. Campbell Jr.
Robert H. Cohen
Christine Müller
Antonia Niederprüm
Alexandre de Streel
Sonja Thiele
Claus Zanker

WIK-Consult GmbH
Rhöndorfer Str. 68
53604 Bad Honnef
Germany


Bad Honnef, August 2013

# Contents

## Case Studies

## Figures

# Tables

# Abbreviations

| | |
|---|---|
| ABA remail | Mail sent from a sender one country (A) to a recipient in the same country via a postal operator in a different country (B) |
| AC | Average costs |
| ACM | Autoriteit Consument & Markt - the Netherlands Authority for Consumers and Markets |
| ACS (SA) | Acscourier - a provider of courier and postal services for business mailers in Greece |
| AGCM | Autorità Garante della Concorrenza e del Mercato - Italian competition regulator |
| AGCOM | Autorità per le Garanzie nelle Comunicazioni - Italian Regulatory Authority for Communications and Media |
| ANACOM | Autoridade Nacional de Comunicações - National Communications Authority of Portugal |
| ANCOM | Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii - National Authority for Management and Regulation in Communications (Romania) |
| Any2Any | Consumer/ Business/ Government to Consumer/ Business/ Government |
| APEK | Agencija za pošto in elektronske komunikacije - Postal and Electronic Communications Agency of the Republic of Slovenia |
| ARCEP | L'Autorité de régulation des communications électroniques et des postes - Regulation Authority for Electronic Communications and Posts in France |
| AT | Austria |
| AU | Australia |
| B2B | Business-to-business |
| B2C | Business-to-consumer |
| B2R | Business-to-retail |
| B2X | Business-to-consumer/business |
| BE | Belgium |
| BfS | Bundesamt für Statistik - Swiss Federal Statistical Office |
| BG | Bulgaria |
| BIEK | Bundesverband Internationaler Express- und Kurierdienste e.V. - German association |
| BIPT | Belgische regulator voor de postdiensten en de telecommunicatie - Belgian Institute for Postal Services and Telecommunications |
| BLK letters | Bulk letters |
| BNetzA | Bundesnetzagentur (Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway, Germany) |
| BPM-Luxembourg | A private logistics company from Luxembourg |
| BPO | British Post Office (former name of Royal Mail Group) |
| bpost | Postal operator in Belgium |
| C2B | Consumer-to-business |
| C2C | Consumer-to-consumer |
| C2X | Consumer-to-consumer/business |
| CA | Canada |
| CAGR | Compounded annual growth rate |
| CC | Community Customs Code |
| CCIP | Consolidated Implementing Provisions |
| CE | Copenhagen Economics |

| | |
|---|---|
| CEN | Comité Européen de Normalisation - European Committee for Standardization |
| CEO | Chief Executive Officer |
| CERP | Committee for Postal Regulation |
| CFDT | Confédération Française Démocratique du Travail - a trade union in France |
| CFTC | Confédération Française des Travailleurs Chrétiens - a trade union in France |
| CGC | Confédération Générale des Cadres - a trade union in France |
| CGT | Confédération Générale du Travail - a trade union in France |
| CH | Switzerland |
| CN 22/CN 23 | Simplified customs forms developed by the UPU |
| CNC | Comisión Nacional de la Competencia - Spanish competition authority |
| CNPR | Compania Nationala Posta Româna - Romanian Post |
| CNSP | Comisión Nacional del Sector Postal - Spanish National Regulatory Authority for Postal Services |
| COM | Communication from the Commission |
| Compls | Complaints |
| ComReg | Commission for Communications Regulation (Ireland) |
| COO | Chief Operating Officer |
| Cor | Correspondence |
| CRC | Communications Regulation Commission of Bulgaria |
| CRM | Customer relationship management |
| CSS | Customer Service System |
| CTO | Czech Telecommunication Office |
| CTT | Correios de Portugal, S.A. - national postal service of Portugal |
| CVC | A private equity and investment advisory firm in Luxembourg |
| CY | Cyprus |
| CZ | Czech Republic |
| D+1 | Routing time where mail is delivered the first working day after posting |
| D+2 | Routing time where mail is delivered the second working day after posting |
| D+3 | Routing time where mail is delivered the third working day after posting |
| D+5 | Routing time where mail is delivered the fifth working day after posting |
| DA | Deficit Approach |
| DB Schenker | transportation and logistics activities of Deutsche Bahn |
| DE | Germany |
| DG | Directorate General (of the European Commission) |
| DG MARKT | Directorate General for Internal Market and Services (of the European Commission) |
| DHL | Brand used by Deutsche Post DHL, primarily for parcels and express |
| DK | Denmark |
| DM | Direct mail |
| DPD | Dynamic Parcel Distribution GmbH & Co. KG, German company of parcel services |
| EBIT | Earnings before interest and taxes |
| EC | European Commission |
| ECJ | European Court of Justice |
| EE | Estonia |
| EEA | European Economic Area |

| | |
|---|---|
| EEC | European Economic Community |
| EETT | Στοιχεία Επικοινωνίας - Hellenic Telecommunications And Post Commission (Greece) |
| EFTA | European Free Trade Association |
| EIRO | European Industrial Relations Observatory |
| EL | Greece |
| ELTA | Ελληνικά Ταχυδρομεία - Hellenic Post (Greece) |
| EMS | Express Mail Service, a product line coordinated by a cooperative of the Universal Postal Union |
| E-Parcel Group | Enhanced Parcel Group |
| EPG | E-Parcel Group |
| EPMU | Equi-proportional mark-up |
| ERGP | European Regulators Group for Postal Services |
| ERS | Easy Return Services or 'Easy Return Solution' by IPC |
| ES | Spain |
| ETOE | Extraterritorial office of exchange |
| EU | European Union |
| EU-28 | The European Union after 1 July 2013, with 28 member states |
| EUR | Euro |
| Eurostat | Statistical Office of the European Communities |
| FedEx | Federal Express - a US-based company offering express services |
| FEDMA | Federation of European Direct and Interactive Marketing |
| FI | Finland |
| Ficora | Finnish Communications Regulatory Authority |
| FNV | Abvakabo - Dutch trade union for the public sector |
| FO | Force Ouvrière - a trade union in France |
| FR | France |
| FSC | Fastest standard category |
| FTE | Full-time equivalent |
| GA | General authorisations |
| GATS | General Agreement on Trade in Services |
| GDP | Gross domestic product |
| Gov2B | Government-to-business |
| Gov2C | Government-to-consumer |
| Gov2X | Government-to-consumer/buisness |
| Govt | Government |
| GUSCs | General universal service conditions |
| GZS | Gesellschaft für Zahlungssysteme mbH - a German company for payment systems |
| HAKOM | Hrvatska agencija za poštu i elektroničke komunikacije - Croatian Post and Electronic Communications Agency |
| HDN | Home Delivery Network |
| HR | Croatia |
| HU | Hungary |
| IBPT | Institut belge des services postaux et des télécommunications - Belgian Institute for Postal Services and Telecommunications, see BIPT |

| | |
|---|---|
| ICP-ANACOM | Instituto das Comunicações de Portugal-Autoridade Nacional de Comunicações - National Communications Authority (Portugal) |
| ICT | Information and communication technology |
| IE | Ireland |
| IL | Israel |
| ILR | Institut luxembourgeois de régulation - Luxembourg Institute for Regulation |
| IMRG | Interactive Media in Retail Group |
| IMX | A private company offering international mail services |
| InPost | A private company from Poland offering letter and parcel services |
| IPC | International Postal Corporation |
| IPO | Initial Public Offering |
| IS | Iceland |
| IT | Italy |
| ITA Consulting | German consulting company focused on the logistics industry |
| IUM | A Media Agency based in Copenhagen |
| JP | Japan |
| KPG | Kahala Posts Group |
| KPN | Koninklijke PTT Nederland (‘Royal Dutch Post’, former name of PostNL) |
| Let | Letters |
| LI | Lichtenstein |
| Lic | Licence |
| LP | Letter post |
| LRIC | Long run (average) incremental costs |
| LT | Lithuania |
| LU | Luxembourg |
| LV | Latvia |
| MCA | Malta Communications Authority |
| MCC | Modernised Customs Code |
| MD 2010 | Study ‘Main Developments in the Postal Sector (2008–2010)’ (2010) |
| Min Post | Ministry responsible for the postal sector |
| MIT | Ministry of Industry and Trade (Czech Republic) |
| MNV | Magyar Nemzeti Vagyonkezelő Zrt. - Hungarian State Holding Company |
| MRW | Spanish courier and logistics company |
| MS | Member State(s) |
| MT | Malta |
| NA | No answer/not available |
| NAC | Net Avoidable Cost |
| NACE | Nomenclature des Activités Économiques dans la Communauté Européenne - a European industry standard classification system |
| NCA | National competiton authority |
| NCPA | National consumer protection authority |
| NGO | Non-governmental organization |
| NL | The Netherlands |
| NMA | The Netherlands Competition Authority |

| | |
|---|---|
| NMHH | Nemzeti Média és Hírközlési Hatóság - National Media Communications Authority in Hungary |
| NO | Norway |
| NPT | Norwegian Post and Telecommunication Authority (Post- og teletilsynet) |
| NRA | National regulatory authority |
| NZ | New Zealand |
| OCECPR | Office of the Commissioner for Electronic Communication and Postal Regulation of Cyprus |
| OECD | Organisation for Economic Co-operation and Development |
| Ofcom | Office of Communications - regulator and competition authority for the UK communications industries |
| Ombud | Ombudsman |
| OMD | OmnicomMediaGroup, a company from Danmark |
| Opek | A Polish courier company |
| P&T | Poste et télécommunications Luxembourg - postal and telecommunications services operator in Luxembourg |
| PAEA | Postal Enhancement and Accountability Act (USA) |
| PC | Profitability Cost Approach |
| PIN Mail | PIN intelligente Dienstleistungen AG - a postal operators in Germany |
| PIQUE | Report on Privatisation of Public Services and the Impact on Quality, Employment and Productivity |
| PL | Poland |
| PLC | Public limited company |
| PLN | Polish Zloty, Polish currency |
| POC | Postal Operations Council |
| Postcom | Eidgenössische Postkommission - Federal Postal Services Commission in Switzerland |
| PostCon | A German mail consolidator |
| PostNL | Dutch postal operator |
| PPO | Public postal operator |
| PPP | Purchasing Power Parity |
| PRU | Postal Regulatory Office in Slovakia |
| PT | Portugal |
| PTA | Post and Telecom Administration of Iceland (Póst- og fjarskiptastofnun) |
| PTS | Post- och telestyrelsen - Swedish Post and Telecom Authority |
| PTT | Ministry of posts, telegraphs, and telecommunications (traditional name for postal administrations) |
| PUC | Public Utilities Commission, Lithuania |
| QR-codes | Quick-Response-codes |
| RMB | Renminbi/Yuan - Chinese currency |
| RO | Romania |
| ROUSP | Romania Post |
| RRT | Respublikos Ryšių reguliavimo tarnyba - Communications Regulatory Authority (Lithuania) |
| RTR | Rundfunk und Telekom Regulierungs-GmbH, Austrian Regulatory Authority for Broadcasting and Telecommunications |
| Sandd | ‘Sort and Deliver’ - a postal operator in the Netherlands |

| | |
|---|---|
| SE | Sweden |
| SGEI | Services of general economic interest |
| SI | Slovenia |
| SK | Slovakia |
| SME | Small and medium sized enterprises |
| SMP | Sigificant market power |
| SMP | Significant market power |
| SNCF | Société nationale des chemins de fer français - French Transport and Logistics company |
| SOE | State-owned enterprise |
| SOP | Syndicat des Opérateurs Postaux - a trade union in France |
| SP letters | Single piece letters |
| SSC | Second fastest standard category |
| SUD | Solidaires Unitaires Démocratiques - a trade union in France |
| TATEX | Tat Express - a French business-to-business express provider |
| TDI | Time definite international |
| TEU | Treaty on European Union |
| TFEU | Treaty on the functioning of the European Union |
| TISA | Trade in Services Agreement |
| TNT Express | An international courier delivery services company with headquarters in the Netherlands |
| TNT N.V. | Former name of PostNL |
| TNT Post | Brand used by PostNL subsidiaries outside the Netherlands, e.g in Germany and the UK |
| TOP3 | Three most important |
| TTIP | Transatlantic Trade and Investment Partnership |
| UK | United Kingdom |
| UKE | Urząd Komunikacji Elektronicznej - Office of Electronic Communications (Poland) |
| UNEX | System by IPC to measure international letter service performance between around 40 postal operators |
| UNI Europa | European association of service unions |
| UPU | Universal Postal Union |
| US | Universal service or United States |
| USA | United States of America |
| USO | Universal service obligation |
| USP | Universal service provider |
| USPS | United States Postal Service |
| VAT | Value added tax |
| w.r.t. | With respect to |
| WIK | WIK Wissenschaftliches Institut für Infrastruktur und Kommunikationsdienste GmbH |
| WTO | World Trade Organization |
| WZB | Wissenschaftszentrum Berlin für Sozialforschung |
| yr | Year |

# Executive Summary

'Postal services' — delivery services for documents and parcels provided by private companies or public undertakings — continue to have a central role in the development of an effective and dynamic Single Market. However, the role of postal services is changing fundamentally. Demand for distribution of letters, newspapers, magazines, advertisements, and other documents is declining due to the rise of advanced electronic communications. At the same time, demand for parcel delivery services is increasing due to the development of e-commerce, just-in-time manufacturing, and other business trends driven by the new electronic technologies.

The present study is the fifth in a series of 'Main Developments' studies. These studies have been motivated, in part, by the Commission's obligation under the Postal Directive to prepare periodic reports for the European Parliament and Council on the application of the Postal Directive. The 'application reports' summarise developments in the sector pertaining to implementation of the regulatory framework, quality of postal service, economic and social issues, employment, and technological changes.

In addition, this study seeks to place recent developments in the larger context of European postal reform and the changing nature of the sector. Taking into account lessons learned from the past and foreseeable developments, we suggest options for policy makers to consider for further benefit of the postal sector in the future, including modernisation of the EU postal policy and its regulatory framework for postal services. This study covers the 28 Member States of the European Union; the 3 non-EU Member States of the European Economic Area (Lichtenstein, Iceland, Norway); and Switzerland.

## 1 Regulatory developments

### 1.1 Legal and regulatory framework

*Transposition of the Third Postal Directive is not quite complete.*

As of 1 May 2013, all 28 Member States have adopted legislation to transpose the Third Postal Directive into national law, except Cyprus and Romania. None of the 3 non-EU EEA Member States (IS, LI, NO) has transposed the Third Postal Directive.

*In some Member States, government's ownership interest in a public postal operator may unduly affect policy making and/or regulation of the sector.*

Independence of the National Regulatory Authority (NRA) has always been a principal requirement of the Postal Directive. Nonetheless, the present study suggests that some Member States can do more to ensure that regulatory decisions of the NRA and policy making decisions of government are unaffected by government ownership of a public postal operator, invariably designated the 'universal service provider' (USP).

*Inadequate resources and enforcement authority of NRAs in some Member States.*

The Third Postal Directive emphasised that NRAs '*should be provided with all necessary resources, in terms of staffing, expertise and financial means, for the performance of their tasks*.' Resources of the NRAs vary widely among the Member States, even in comparably sized postal markets. Up to 13 Member States may need to consider providing their NRAs additional resources to ensure full and effective implementation of the Postal Directive.

To ensure compliance with obligations arising from the Postal Directive, NRAs also need adequate enforcement authority. In practice, the powers of the NRAs vary significantly. Most NRAs report adequate authority to collect data and market statistics. In fact, however, data collection remains incomplete and poorly coordinated among Member States. Furthermore, only about one-third of NRAs can levy significant fines (1 per cent of revenue or more) or issue remedial orders and seek court enforcement.

## 1.2 Market opening and potential restraints on competition

*Authorisations for postal operators may include conditions designed to protect the USP or inhibit new entrants from 'having a go' with a new idea in some Member States.*

Under the Postal Directive, Member States may require postal operators to comply with the requirements of an 'authorisation'. In some cases, authorisations include conditions relating to 'quality, availability, and performance', which protect the universal service provider from competition to some degree. Such conditions may inhibit competition and innovation. Three Member States reserve the right to impose conditions designed to restrain competition with the USP. In our view, such conditions exceed the scope permitted by the Directive since the Directive provides other, less restrictive means of ensuring universal service.

*Non-discriminatory access to the postal infrastructure is proceeding more quickly in some Member States than others.*

The Third Postal Directive added a requirement that Member States must allow all postal operators access to elements of postal infrastructure, such as address databases and post office boxes, when necessary '*to protect the interest of users and/or to promote effective competition*'. Member States have not developed a consensus on how to implement this provision. However, at least 7 Member States have made significant progress in providing non-discriminatory access to the postal infrastructure.

*Special tariffs for universal services are not generally transparent and non-discriminatory.*

When USPs make available 'special tariffs' (e.g., discount rates for senders who prepare or transport the mail before tendering), the Postal Directive requires that '*the tariffs, together with the associated conditions, shall apply equally*' to all users who post items under similar conditions. NRAs do not enforce this requirement with equal rigor,

however. In many Member States, transparent and non-discriminatory special tariffs are required by law but not verified in practice. In most Member States, there is little public information on downstream access tariffs. It appears that special tariffs are often unavailable to other postal operators and/or consolidators in several Member States.

*Unequal application of VAT to postal services undermines full market opening.*

Member States have traditionally exempted some or all services of the public postal operator from value-added tax (VAT) while applying VAT to similar services provided by private companies. Since 2003, the Commission has urged limitation or repeal of a provision in the 1977 Sixth VAT Directive that requires a VAT exemption for 'public postal services'. In 2009, in the *TNT UK Post* case, the Court of Justice of the European Union ruled that Member States must provide a VAT exemption for postal services of the USP '*supplied in its capacity as the universal service provider*' but not for '*specific services dissociable from the service of public interest*'.

Among the Member States, the scope of the VAT exemption for postal services varies widely. Three Member States (SE, IS, NO) and Switzerland, provide no VAT exemption for postal services. At the other end of the spectrum, 10 Member States appear to grant VAT exemptions that exceed the scope of the universal service obligation. Following a Commission statement of objections, both Germany and the UK have recently revised their VAT laws, although in each case the reforms appear to fall short of commercial neutrality. The British law continues the VAT exemption for some downstream mail services of Royal Mail. TNT UK Post has objected, and in late 2012, a British court agreed to ask the European Court of Justice for clarification of the *TNT UK Post* judgment. Meanwhile, both the European Regulators Group for Postal Services and DG Taxation and Customs have published major studies on the distortive effects of the VAT exemption for postal services.

*Member States appear to grant special UPU-defined customs treatment to all cross-border services of designated public postal operators.*

Applying customs laws differently to different postal operators in similar circumstances is inconsistent with the goal of the Postal Directive to achieve full market opening. Nonetheless, the present survey indicates that special customs treatment for public postal operators applies to all or most of their postal services, not only to universal services.

## 1.3 Application of the competition rules

*In antitrust cases, competition authorities have rendered significant decisions related to the postal sector in the last three years.*

During the period 2010 to 2013, national competition authorities (NCAs) in several Member States condemned postal operators for competition law infringements. The most common complaint was rebates offered by the postal incumbent to hinder or

exclude competitors. In 2012, in *Post Danmark v Konkurrencerådet*, the Court of Justice of the European Union clarified the application of the competition rules to rebates. In brief, the Court refused to condemn price discrimination under the competition law per se. In addition to price discrimination, the Court concluded that 'it is necessary to consider whether that pricing policy, without objective justification, produces an actual or likely exclusionary effect, to the detriment of competition and, thereby, of consumers' interests'.

In addition to anticompetitive rebates, two NCAs condemned public postal operators for a refusal to provide services to particular customers without objective justification. And in two other Member States, NCAs rejected anticompetitive agreements between public postal operators and companies that managed networks of retail outlets.

The Commission decided one price-fixing case and reviewed two concentrations. In 2012, the Commission condemned an anticompetitive price-fixing agreement between freight forwarders, including Deutsche Post, involving shipments between the EU and China. The Commission also decided two major merger cases. In July 2012, the Commission cleared the creation of Asendia, a joint venture between the French La Poste and Swiss Post to provide international mail services in various Member States. In January 2013, the Commission prohibited the proposed acquisition of TNT Express by UPS because it found the merger would reduce the number of major competitors from three to two and would significantly impede effective competition in 15 national markets.

*In state aid cases, the Commission has (with exceptions) permitted Member States to assume the costs of preparing USPs for competition and sustaining universal services.*

During the period 2010 to 2013, the Commission adopted state aid decisions relating to the postal sector in several Member States. Most state aid cases dealt with public service compensation for providing universal services. The Commission generally found such aid justifiable. Three cases concerned compensation for the USP for the high costs of pension systems established when postal employees were civil servants. The Commission considered such aid justifiable if the result was that remaining social security contributions borne by the USP are equivalent to those of private competitors. Two cases dealt with aid for corporate restructuring and modernisation. These were considered justifiable. Finally, one case involved a governmental guarantee of the debts of the public postal operator. The Commission concluded that debt guarantees gave the public postal operator an economic advantage over its competitors.

### 1.4 Regulation of cross-border services

*Cross-border postal services are governed by the often contradictory requirements of the Postal Directive and EU competition rules, on the one hand, and the acts of the UPU, on the other.*

Most provisions in the Postal Directive apply to cross-border as well as national services, some explicitly so (USO, terminal dues, service standards). In addition, other EU laws — such as the competition rules, customs law, and trade laws — substantially affect cross-border postal services. However, EU/EEA Member States also participate in the regulatory framework for cross-border postal services established by the Universal Postal Union (UPU), an intergovernmental organization and agency of the United Nations. Acts of the UPU prescribe standards for rates that public postal operators charge each other for delivery of cross-border documents and parcels (called 'terminal dues' and 'inward land rates'), the scope of the universal postal service, quality of service standards, designation of postal operators that are subject to UPU rules (called 'designated operators'), customs and security procedures, and restraints on provision of postal services under certain conditions (e.g., remail services and operation of extra-territorial offices of exchange). The acts of the UPU are based on principles that differ from, and in key respects are contrary to, the principles of EU law.

Most NRAs report full authority to ensure compliance with the Postal Directive with respect to both intra-EU/EEA and extra-EU/EEA cross-border postal services. Nonetheless, more than half of the NRAs take the position that either they cannot apply the Postal Directive if it is contrary to UPU provisions or they do not know which law takes precedence. Only 10 small Member States authorise the NRA to implement the Directive with respect to all cross-border postal services and unambiguously recognize the NRA's obligation to do so.

*NRAs have not ensured that terminal dues for cross-border universal services are consistent with the principles of the Postal Directive.*

Under Article 13, Member States are 'encouraged' to ensure that prices for delivery of intra-EU/EEA universal services are cost-oriented, transparent, and non-discriminatory. Article 13 further provides that '*implementation of these principles may include transitional arrangements*' and that '*such arrangements shall, however, be restricted to the minimum required to achieve these objectives*'. Since more than a decade has passed since Article 13 became effective, the time for transitional arrangements must be deemed to have lapsed. Nonetheless, it seems that NRAs have not implemented the principles of Article 13. No NRA ensures terminal dues relating to cross-border universal service are transparent or cost-oriented. In most or all Member States, the USP charges rates for the delivery of similar postal items which discriminate based on (1) whether the postal item is a domestic or intra-EU postal item and/or (2) which EU/EEA Member State originates the mail. Similar lapses are found in the exchange of postal services between the EU/EEA Member States and industrialised countries

outside the EU/EEA area. USPs charge less for the delivery of inbound universal service items received from industrialised countries (such as the United States and Japan) than they charge for the delivery of similar items received from residents in their own national territories.

The terminal dues rates established by the UPU are not related to actual costs and not aligned to domestic postage rates. The resulting distortions benefit low cost, postal exporting countries at the expense of high cost importing countries. The UPU terminal dues system, where applied, appears to create substantial distortions in trade between Member States and in trade with other industrialised countries such as the United States.

*UPU provisions fixing terminal dues and restricting competition among postal operators appear to be incompatible with EU competition rules.*

In light of EU legal precedents, including two Commission decisions applying the competition rules to the Reims II terminal dues agreement, UPU terminal dues arrangements must be considered 'price-fixing agreements' within the meaning of the EU competition rules. Although there is a 'public benefits' exception for price-fixing agreements, the only UPU terminal dues provisions, if any, which can plausibly fit within this exception are those relating to postal exchanges with developing countries. Moreover, the UPU has adopted anticompetitive restrictions against (1) postal operators opening offices outside their national territories (ETOEs); (2) postal operators accepting postal items sent by companies residing outside their national territory (remail); and (3) use of UPU documentation necessary to interconnect with the international public postal network (e.g., IMPC codes). While these measures do not absolutely prohibit competition, they protect each designated operator in its national territory by making it more difficult for foreign designated operators and private postal operators to compete in the supply of outbound cross-border postal services. As such, these measures appear to be abuses of dominant position under EU competition rules.

## 1.5 Universal postal service

*The range of services included in the universal service obligation varies among Member States from single-piece items only to all types of postal services.*

The scope of the 'universal service obligation' (USO) ensured by each Member State is defined according to overall parameters established by the Postal Directive. The term 'universal service' refers to a set of affordable postal services of 'specified quality' for the nationwide collection and delivery of letters, other documents, and postal packages weighing up to 10 kg (or 20 kg at the Member State's discretion). At a minimum, universal service includes '*single-piece*' letters and parcels. In addition, some Member States also ensure nationwide provision of specialized services for non-priority items, bulk letters, direct mail, newspapers and other periodicals, or bulk parcels.

In our survey, we asked which postal services are ensured as universal services. Relying on the answers of the NRAs (in some cases, USPs disagreed), the scope of universal service in Member States may be summarised as follows: 11 Member States, accounting for about 56 per cent of the EU/EEA letter post market, include only single-piece letter and parcel services in the USO; 6 Member States also include specialised services for bulk letters; 4 Member States also include specialised services for either direct mail or bulk parcels; and 8 Member States include essentially all non-express postal services in the USO. With increasing competition and reduced letter volumes, Member States appear to be moving gradually to limiting the scope of universal services to fewer types of services.

*Most Member States have designated the public postal operator as the universal service provider for the entire national territory without the objective, proportional, and non-discriminatory consideration of alternatives required by the Postal Directive.*

Under the Postal Directive, Member States may employ one or a combination of three legal mechanisms to ensure provision of the universal service: reliance on market forces, designation of one or more universal service providers (USPs), or public procurement of universal services. In determining the mechanism or combination of mechanisms for ensuring universal service, Member States should respect '*the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion*'. In practice, almost all Member States have designated the public postal operator as the single USP for the entire national territory without considering alternatives. Yet most NRAs believe that reliance on market forces would risk loss of universal service in only relatively few, isolated portions of the national territory. A prominent exception to unexamined national designation is Germany, where the NRA has concluded that Deutsche Post and other operators provide satisfactory universal service to the entire national territory in response to market forces.

*There is an emerging consensus that the 'profitability cost approach' is the appropriate method for estimating the net cost of the USO, but there are few estimates to date.*

The Postal Directive prescribes principles for calculating the net cost, if any, of providing universal service. Over the last five years there has been an emerging consensus that the 'profitability cost approach' (PC) provides the basis for calculating the net cost of the USO in a manner that most closely corresponds to Annex I of Postal Directive. So far only 3 Member States and Switzerland have developed estimates of the net cost of universal service using this method.

*Member States that provide financial support for universal services do so almost exclusively using general tax revenues rather than compensation funds.*

The Postal Directive provides that Member States may compensate a USP for the portion of the net cost of the USO that is deemed to be 'unfair'. Funds may come either from general tax revenues or from a 'compensation fund' financed by mandatory contributions from postal service providers. In our survey, 4 Member States (ES, IT, PL,

NO) reported use of public funds to compensate the USP in the most recent fiscal year. Recent state aid cases indicate that at least 4 more Member States (BE, DE, FR, UK) have also used public funds to sustain elements of the universal service. Twenty-two Member States have authorised the establishment of a compensation fund but. However, only 4 Member States (CY, EE, IT, SK) have actually established a compensation fund, and in no case does the compensation fund appear to play a significant role in supporting universal service.

*Regulation of tariffs and accounts varies widely among NRAs and does not always fully implement the requirements of the Postal Directive*

The Postal Directive requires Member States to ensure that '*tariffs for each of the services forming part of the universal service*' must meet certain standards. Prices must be 'affordable', 'cost-oriented', 'transparent and non-discriminatory'. NRAs implement these requirements very differently and in some cases incompletely (e.g., lack of transparency, inadequate accounts to evaluate cost-orientation, etc.). Differences may be found in the level of product aggregation that must be 'cost-oriented'; the standard for cost-orientation; the adoption (or not) of specific criteria for price transparency; methods of price control; methods of cost allocation; and the transparency of cost allocation methodology. In other cases, Member States apply the requirements of Article 12 to postal services outside the universal services obligation, in particular to special tariffs.

*Service standards are set for most single-piece services but rarely for bulk services.*

Under the Postal Directive, Member States must ensure that quality of service standards are set for domestic universal services. In addition, Member States must arrange for independent performance monitoring annually and publish the results. All Member States set service standards for single-piece correspondence in the fastest standard category. Fourteen Member States set service standards for non-priority letter services, and 19 Member State for single-piece parcels. Only 8 Member States set service standards for other services (bulk mail, direct mail, newspapers and periodicals). Service standards are typically expressed as the percentage of items that must be delivered the first business day after posting. For single-piece priority letter mail, the targets vary between 80 and 97 per cent. While transit time targets have remained largely unchanged since 2010, overall transit time performance has improved during the last three years at both national and intra-EU cross-border levels

## 1.6 Protection of users

*In almost all Member States the NRA protects users' rights, often acting in conjunction with the national consumer protection agency (NCPA).*

The Postal Directive obliges Member States to ensure that 'transparent, simple and inexpensive' procedures are drawn up for protection of users of all postal operators, not only users of USPs. Sixteen Member States authorise both the NRA and NCPA to

enforce user protections in the postal sector; another 12 Member States and Switzerland rely solely on the NRA; only Finland relies solely on the NCPA. All Member States have extended user protection to all postal operators.

The Postal Directive further provides that Member States shall ensure users have access to prompt and fair dispute resolution with provision for reimbursement and/or compensation. Users who do not get satisfaction from the USP must be able to appeal to a competent national authority. Almost all Member States have appointed a competent national authority to review users' complaints that have not been satisfactory resolved by the USP. In most cases, this is the NRA, but in 3 Member States (BE, SE, UK), it is an ombudsman or a similar complaint body. These sectoral dispute resolution procedures may be supplanted by recent EU legislation on alternative and online dispute resolution.

## 2 Market developments

*Demand for letter post is declining but demand for parcels is growing.*

Between 2007 and 2011, revenues in the European postal sector declined from € 94 billion to € 91 billion. The postal sector now accounts for 0.72 per cent of total GDP in the EU. While parcel and express revenues have grown, demand for letter post services has declined substantially since the start of the financial crisis 2007. In 2011, about 82 billion letter post items were delivered in the European Union (EU-28), compared to 97 billion items in 2007.

Demand for postal services in the Member States is heterogeneous and reflects differences in economic development. The Western Member States (AT, BE, DE, DK, FR, FI, IE, LU, NL, SE, UK, IS, LI, NO, CH) have the highest letter post and parcel volumes: 252 letter post items and 20 parcels per inhabitant in 2011. In contrast, citizens of the Southern (CY, EL, ES, IT, MT, PT) and the Eastern (BG, CZ, EE, HR, HU, LT, LV, PL, RO, SI, SK) Member States received only 82 and 50 letter post items per year on average. An average of 5 parcels per capita were delivered annually in the Southern Member States, and only 2 parcels in the Eastern Member States. In the European Union (EU-28) the average annual per capital volumes were 163 letter post items and 13 parcels.

*Changing communication habits and economic recession challenge letter post markets.*

Letter post volumes are in decline in nearly all Member States. Countries with well-developed letter post markets experienced the strongest decline, particularly where electronic communications are most developed. Denmark and the Netherlands have been most affected by 'e-substitution' so far. Direct mail (advertising) and publications appear to be less affected than letters. The ongoing economic recession still limits growth in mail volumes in many Eastern and Southern Member States. With increasing use of electronic alternatives and substantially less developed direct mail services,

these markets will probably never attain the peak levels of demand achieved in Western Member States.

*Competition stagnates in letter post markets.*

Despite full market opening, very little competition has emerged in domestic letter post markets. The reasons vary. Generally, declining mail volumes discourage new entrants and potential investors, particularly in Western and Southern Member States. Only in few Member States (DE, ES, HR, NL, IT, SE) have competitors been able to achieve market shares above 10 per cent. Even in these Member States, profitability of new entrants appears marginal, and their market shares appear to stagnate. In some Eastern Member States (notably BG, HR, PL), more robust competition is emerging, a process that has developed over the course of the whole postal reform process. This development is important because competition promotes the growth of these relatively underdeveloped mail markets.

Markets for cross-border letter post are largely dominated by USPs from certain Member States, including DHL Global Mail (Deutsche Post), Asendia (Swiss Post/La Poste), BPI (bpost), and Spring (PostNL). These operators compete across the EU for customers with large cross border volumes. However, there is still areas where no large cross-border letter post operator is active (e.g. in the Eastern Member States).

*The financial situation of USPs is challenged by declining letter post demand.*

Mail operations are characterised by a high share of fixed costs. The profitability of USPs' mail operations has been adversely affected by a continuous and substantial decline in the mail volume Based on a stylised model, we show that as volumes decline cost savings are less significant than losses in volume and revenue. Thus, profits of postal operators decrease more than proportionally. Reduced profitability, or losses, are to be expected in all Member States where volumes decline most. Even worse, the less the initial volume per capita, the greater the effect on profitability. Even though many USPs have struggled to render their cost base more flexible, universal service requirements (e.g., a minimum delivery frequency) constrain options. These economic facts of life are evident in our empirical findings. Profit margins of USPs from traditional mail delivery services have broadly declined since 2010. Overall profitability and the profitability of mail divisions (if published) are often around five per cent. At the lower end, some USPs have reported losses recently for their mail operations.

*Postal operators diversify, reduce costs, and raise prices in response to volume declines.*

USPs have prepared differently for volume declines in their mail operations, which has traditionally been their core business. In some cases, growing revenues in parcel operations have partially offset declines in mail revenues. Other strategies (usually begun well before 2010) focus on financial services (e.g. Poste Italiane and Swiss Post), domestic parcel operations, and/or international mail, parcel and logistics

operations (e.g., Nordic postal operators, PostNL, Royal Mail, La Poste, Austria Post, Deutsche Post, Eesti Post). Generally, the more commercially minded the USP, the better prepared it is for change. By the same token, the more receptive a Member State has been to competition and light-handed regulation, the more prepared has been its USP to respond to the evolving market .

USPs have also been forced to adopt new price strategies where permitted by the universal service obligation. Prices have increased well above inflation rates in some Member States (e.g. DK, NL, UK). Although price increases improve revenues in the short term, they may depress demand over time. Business customers are typically more price sensitive than individuals and appear more inclined to switch to electronic communications. Price increases, therefore, run the risk of accelerating e-substitution. As businesses look to save mailing costs, some postal operators have introduced new non-priority services, usually accompanied by increased prices for priority (or 'first class') services.

*Next day delivery is above 90 per cent in many Member States.*

Despite declining volumes, letter post services are still highly reliable in almost all Member States. The vast majority of letters are still delivered the next working day ('D+1'). However, progress in transit time, for both domestic and cross-border services, remains limited in some Eastern and Southern Member States. And in some large Member States, where some letters must be transported long distances, domestic transit times are still below 90 per cent (notably BG, ES, FR, PL, NO). However, these operators have improved performance significantly between 2010 and 2012, particularly La Poste and Polish Post.

*Domestic and cross-border parcel and express markets are growing but unevenly.*

Domestic and cross-border parcel and express markets are growing, but not all segments are growing equally. Express shipments are increasing less than 'deferred' parcels. Shipments from businesses to other businesses (B2B) are growing less than shipments to consumers (B2C). The most important driver for B2B shipments is the economy, while e-commerce drives B2C shipments. Online sales have broadened the customer base for parcel operators. E-commerce has not merely replaced traditional mail orders but increased distance selling, both domestically and, increasingly, cross-border.

Cross-border shipments are still dominated by B2B parcel and express operators. Promoted by the intra-EU market for goods and services, B2B parcel and express services are now provided by well-established regional networks. Cross-border B2C shipments are also becoming more and more important. Consumers increasingly order goods from other countries, predominantly from countries with similar language and culture. Generally, cross-border purchases are more important where home markets

are small, perhaps because small market consumers look for the wider choice available in larger markets.

Domestically, B2C parcel volumes are highest in high income Member States with a tradition of mail ordering and distance. These are mostly the Western Member States. Demand is not as strong in many Southern and Eastern Member States that have lower incomes and lack a tradition of mail order services. However, growth rates in online sales in these markets are high, indicating that e-commerce is a major driver here, too.

Growth in parcel and express volumes is generally higher than growth of revenues. This results primarily from a shift from express to deferred parcel services, a higher proportion of B2C shipments, and increasing price competition.

*Parcel and express markets are more competitive than letter post markets.*

Since parcel and express services were never subject to national monopolies, they are generally more competitive than letter post markets. In the past, private parcel and express operators at local, regional, or global levels developed high quality, innovative, and customised delivery services focused mostly on B2B shipments. USPs had a relatively small share of B2B shipments in most European countries. Today, international express and parcel carriers — notably DHL, UPS, TNT Express, and FedEx but also ground networks including DPD (French La Poste) and GLS (British Royal Mail Group) — compete on an EU-wide basis. The failed merger of UPS and TNT Express has strengthened the market position of DHL. The increasing demand for deferred parcels has benefitted European road networks, notably DPD and GLS, both in the B2B segment and, more importantly, in the B2C segment.

*USPs are strong in B2C services, but market growth is attracting new players.*

Generally, USPs have a first mover advantage in B2C delivery due to their dense nationwide access and delivery networks. USPs also enjoy cost advantages since they combine parcel and mail delivery, at least in rural areas. In many Western Member States, USPs have taken advantage of these assets to meet the growing demand in the B2C segment. They have modernised parcel operations and provide highly reliable parcel delivery services nationwide, often overnight and combined with tracking and tracing as a standard service. Moreover, through the E-Parcel Group, USPs can offer tracked cross-border parcel delivery and parcel return services.

Growth in the B2C market is attracting private operators. In the more mature Western countries (DE, FR, UK), specialised parcel operators, often founded by large mail order companies, offer low priced delivery of B2C delivery services. B2B parcel operators are also entering the B2C market increasingly. In particular, they are venturing into many Southern and Eastern Member States that lack a mail ordering tradition.

*Access to postal services has substantially improved in many Member States*

Traditionally USPs have maintained dense networks of postal outlets. These are proving to be important assets for the growing segment of B2C deliveries. The total number of postal outlets declined marginally between 2010 and 2012, but some USPs are extending their access networks to improve parcel collection and delivery. There is a continuing trend to use postal agencies instead of more expensive post offices. Postal agencies generally are more flexible, more cost effective, and offer longer opening hours for consumers.

In order to meet the needs of B2C customers, private parcel and express operators are adapting their B2B-oriented operations. They are investing in sorting capacities, retail networks, change delivery operations, and parcel return systems. Parcel and express operators are also arranging with retail shops to serve as additional access points, both in the mature Western Member States and in the developing Eastern and Southern Member States. Private operators are developing new techniques to improve services to recipients while avoiding failed delivery attempts. Innovations include SMS alerts, redirection services, guaranteed time windows for delivery, and automated parcel lockers for pick-up.

*Traditional employment in USPs is declining, but new employment opportunities are emerging in private letter operations and in growing parcel markets*

USPs employed a total of 1.68 million people in 2011, down by 2.5 per cent from 2010. The decline was driven by efficiency programmes, increased automation, and volume declines. By contrast, new employment has emerged in the growing parcel and express business. In the few Member States where there is noticeable competition in end-to-end delivery of letter post, additional employment has been created by new entrants. However, overall employment trends in the sector are unclear because there is insufficient data on sector employment, particularly on employment in the parcels and express segment.

*Increased flexibility of employment contracts*

Postal operators are increasing flexibility in employment contracts so they can respond to changing volumes and reduce fixed costs in postal operations generally. Temporary and part-time contracts are increasing. They are used by new entrants in the letter market and subcontractors in parcel delivery. Use of temporary employment by USPs is generally more limited due to the need to negotiate such practices with a highly organised workforce.

*Social partners manage change in postal operations in a socially responsible way*

Union density is traditionally high among employees of the USPs. The USPs and employee representatives face difficult challenges as volume declines necessitate substantial reorganisation of postal operations and staff reductions. In general, it appears that employers and unions recognize the severity of this challenge and

cooperate constructively to manage changes in a socially responsible way. For example, some unions have accepted lower salaries for newly hired staff and more flexible employment conditions (e.g. at Deutsche Post and PostNL). In turn, USPs have committed to avoid lay-offs. However, there are important differences between Member States, and there may be room to improve cooperation among social partners in some Member States.

*Changing patterns of collective bargaining*

Labour relations at USPs are generally governed by collective labour agreements. By contrast, collective labour agreements are used by USP subsidiaries and competitive postal operators only in a few Member States (notably, ES, NL, SE). In some Member States, private postal operators apply collective labour agreements from related sectors, e.g. transportation or retail sectors. In the majority of Member States, national minimum wages apply to all sectors including the postal sector. Some Member States have added social regulation conditions in authorizations for postal operators, but these conditions appear to have had little effect. In some Member States difficult labour relations have been resolved using collective bargaining or other tools available in general labour regulation.

## 3 Conclusions and recommendations

Advances in electronic technologies have fundamentally reshaped the postal sector in the last 15 to 20 years. The Postal Directive was developed at the beginning of this period and reflected the goals and requirements of the postal sector in the 12 Member States of the European Union as it existed in early 1990s. While the benefits for the postal sector in the course of postal reform to date are evident, it is already apparent that many of the premises underlying the Postal Directive must be reconsidered in light of the rapid development of postal markets and the expansion of the EU from 12 to 28 Member States. Moreover, there are no signs that the postal sector has stopped changing. On the contrary, it seems most probable that the EU postal sector in 2035 will far different from today.

Regulatory and market developments in the last three years have, we believe, confirmed that the time has come for policy makers to consider further modernisation of the regulatory framework for postal services. In the last portion this study, we suggest some possible options for further adapting EU postal policies to future postal markets.

### 3.1 Future definition and regulation of universal service

*The EU standard for the USO should further accommodate the evolution of postal markets and the expansion of the EU since 1997.*

In 1997 the original Postal Directive established minimum conditions for universal postal service based on what was considered to be the minimum appropriate level of service

at the time. Economic research underlying the Directive reflected the state of postal services in the EU-12 Member States in 1988, when the average annual volume of postal items per capita was 243. Since 1997 the EU has expanded to include 13 new Member States in which the demand for postal services is only about *one-fifth* that of the EU-12 Member States in 1988. In almost all Member States, letter post volumes are falling. At the extreme, Denmark in 2012 had only about one-quarter as many letter post items as in it did in 1988.

Requiring Member States to guarantee levels of universal postal services that were considered essential in 1997 risks over-investment in postal services. Member States will be subsidizing an older communications technology to the detriment of newer communications technologies. We believe that the definition of universal service must move away from the one-size-fits-all-and-always-will approach reflected in the current Directive. Member States will need greater discretion in determining the scope of the USO. At EU-level, such flexibility might be accomplished by defining universal service in terms of general principles (ubiquity, affordability, accessibility, etc.) that Member States must implement according national circumstances.

*Regulation of the prices and service quality of universal services should be limited where effective competition and market forces suffice to ensure quality universal service.*

The Third Postal Directive added the possibility that a Member State could ensure universal service by relying on ‘market forces’. It is generally in the commercial self-interest of the USP(s) to supply a basic level of universal service to all, or almost all, of the national territory because nationwide service is what major users demand. Where NRAs can reasonably rely on market forces to ensure universal services, it is unnecessary and disruptive to regulate the prices and service quality of postal operators.

Member State’s obligations to regulate the prices and service quality of universal services should be limited to services that are provided under conditions of market dominance. If prices and services are controlled by effective competition and meet or exceed the basic requirements of the USO, then there is no need for the NRA to second guess or overrule the choices of users. Even for market dominant products, the NRA should consider ‘light-handed’ ex post regulation of prices and service quality where it can reasonably rely upon market forces (i.e., commercial self-interest of the USP) to sustain good service quality. On the other hand is it essential that the NRA has appropriate powers, resources, and instruments to apply ex ante regulation where this is required.

*Designation of universal service providers (USPs) should be limited to specific circumstances in which designation is objectively required and proportional.*

If two postal operators are providing similar services in competition with one another and only one postal operator is *obliged* to provide the service as the USP, then the law may regard the two operators as having a different legal 'status'. The consequences of this distinction are profound. If two competitors have a different legal status, then they can be treated unequally in the application of the law. Under such circumstances, there can be no 'level playing field' and no true 'full market opening'.

If designating a postal operator as a USP exempts the operator from equal application of the laws, then the logic and purpose of the Third Postal Directive requires that designation should be used proportionately and as sparingly as possible. In practice, however, with the exception of Germany, Member States have not implemented this principle in transposing the Third Postal Directive. For the future, policy makers should consider an explicit requirement that provides designation may be used only where there is a reasonable and objective risk that no postal operator will supply a specific portion of the universal service.

## 3.2 Regulation of postal services outside the scope of universal service

*NRA regulation could reasonably be extended to non-universal services provided by USPs.*

Under the current Postal Directive, the major regulatory tools of NRAs are limited to ensuring and controlling universal services. Many Member States are reducing the scope of the USO, a trend that appears likely to continue. Narrowing the scope of universal service has meant that some services, such as bulk letter and direct mail services, which were formerly regulated as universal services, are now left unregulated even though the USP retains the market dominant position it achieved as the USP and beneficiary of a reserved area.

*Provisions in the Postal Directive which protect fair competition in the universal service area should be applied to market dominant postal services outside the universal service.*

Several provisions in the Postal Directive which protect fair competition in the universal service area should be made applicable to market dominant postal services outside the scope of universal service as well. All involve an expertise in postal economics that is particularly within the competence of the NRA. These provisions include: non-discriminatory access to postal infrastructure; non-discriminatory access to the postal network/downstream market dominant services of the USP; and accounting controls.

*It appears reasonable to vest NRAs with emergency authority to preserve competition on the basis of a prima facie finding of infringement of the competition rules or a history of past infringements for which there is a plausible risk of reoccurrence.*

Article 22 of the Postal Directive opens the door for Member States to give the NRAs a significant role in enforcing the competition rules with respect to non-universal as well as with respect to universal postal services. Member States have done a fairly good job of integrating regulatory and competition law enforcement. Nonetheless, in 20 Member States, enforcement of the competition rules remains a matter of engaging a busy NCA to act. Under these circumstances, it may be reasonable to require Member States to adopt a middle ground procedure that stops short of vesting NRAs with authority to enforce the competition rules in the postal sector yet empowers NRAs to preserve competition where there is risk of imminent foreclosure. Vesting the NRA with some measure of standby authority may be justified by two salient points. First, once competition in postal markets is snuffed out, it will be extremely difficult to rekindle. Second, in the short term, the NRA is likely to have better knowledge of postal economics and postal markets than the NCA.

## 3.3 A modern institutional framework for cross-border postal services

*EU institutions should assume a larger role in controlling cross-border postal services.*

In regulation of cross-border markets, individual NRAs, and even the postal policy officers in national ministries, are not well positioned, acting alone, to ensure full implementation of the norms of EU law. For the EU to develop and implement a modern legal framework for cross-border postal services, institutions of the EU must assume a larger role in the enforcement of EU law and the coordination of Member States policies.

*The Commission should issue a notice clarifying the application of the EU competition rules to cross-border postal services.*

The 1998 ‘Notice on the application of the competition rules to the postal sector’ set out the principles the Commission would follow in applying the competition rules to the postal sector. The Notice has not been revisited even though the Postal Directive has been extended twice and the Commission and the courts have applied the competition rules to a variety of cross-border postal issues. In the field of cross-border postal services, there is a wide range of competition issues which a new notice could help to clarify. Provisions of the UPU relating to terminal dues, remail, and ETOEs appear to be inconsistent with EU competition rules, yet there remains confusion about the precise extent to which UPU provisions can or cannot be implemented by EU/EEA public postal operators and supported by EU Member States at the UPU.

*Application of the Postal Directive to multilateral terminal dues agreements should be strengthened .*

Provisions of the Postal Directive requiring cost-oriented, non-discriminatory, and transparent terminal dues for intra-EU cross-border mail are largely unenforced and apparently unenforceable. Article 13 of Directive should be strengthened and made more clearly mandatory. A public review of multilateral terminal dues agreements should be reinstated, conducted by the Commission in consultation with the ERGP.

*The Commission participate more actively in the development of a coordinated position among Member States towards the UPU that supports and promotes the development of cross-border e-commerce.*

The next UPU Congress will be held in Istanbul in 2016. Now is the time for the Commission to become more active in the development of a coordinated position among Member States. As a practical matter, this effort should focus on a few issues of particular importance to the EU postal sector. The starting point could be the Commission's recent communication on parcel delivery services in cross-border markets. By coordinating Member States' positions at the UPU in so far as they pertain to cross-border e-commerce, the EU will maximize chances for achieving UPU policies in 2016 that accommodate the long term interests of the EU. Potential topics for a coordinated position include: (1) alignment of terminal dues for small packets with domestic postage rates; (2) a more market-oriented legal framework; and (3) a simplified and globally uniform customs regime for low-value e-commerce parcels.

*The Commission should use ongoing trade negotiations to seek a liberal legal framework cross-border postal services that fully reflects principles of the Postal Directive, EU competition rules, and the Modernised Custom Code.*

With the WTO's Doha Round apparently stalled, the EU and US are now entering two sets of trade negotiations in which initiatives to liberalize trade in postal services could figure prominently. The Transatlantic Trade and Investment Partnership (TTIP) talks seek liberalisation of bilateral trade between the EU and the US. The Trade in Services Agreement (TISA) negotiations include the EU and 47 foreign countries that represent 70 per cent of the world's trade in services. Similarities in law, economic interest, and postal markets between the EU and US suggest  the possibility of substantial cooperation. It thus appears that the EU should explore the potential for further liberalisation of cross-border postal services in the context of the TTIP and TISA negotiations, especially in areas affecting parcel delivery services and e-commerce.

### 3.4 Resolving potential restraints on competition

*The EU should apply the VAT exemption in a non-discriminatory manner to all postal operators providing equivalent services.*

Failure to apply value-added tax (VAT) in a non-discriminatory manner to all postal operators providing competitive services represents a major obstacle to achievement of

full market opening. The practical feasibility of subjecting all postal services to VAT in a non-discriminatory manner has been demonstrated. Iceland, Norway, Sweden, and Switzerland all apply VAT equally to all postal services. We agree with the Commission in recommending that Member States should reconsider repeal of the VAT exemption for postal services or, at a minimum, revise the exemption so as to eliminate unequal application to competitive postal operators.

*In line with the principles of the Postal Directive and the Modernised Customs Code, the EU should apply customs law in a non-discriminatory manner to all cross-border operators.*

The Postal Directive's goal of full market opening implies competitive neutrality in the application of customs law. The EU has already embraced a non-discriminatory approach towards application of the customs law in the Modernised Customs Code (MCC) in 2008. When the MCC is eventually implemented, it will still be necessary for the EU to introduce equal application of the customs laws over the course of a transition period that takes into account, inter alia, the practical capabilities of foreign public postal operators. From this perspective, we suggest that equal application of the customs laws should introduced in stages, beginning with express shipments and then parcels shipped between the EU and *industrialised countries*. Parcels (and 'small packets') are more important for e-commerce than letters and documents, and public postal operators in the industrialised countries may be reasonably expected to have or develop the required electronic capabilities.

*The Postal Directive should provide clearer limits on the extent to which conditions relating to quality, availability, and performance which may be attached to authorisations.*

Although the Postal Directive permits Member States to introduce authorisations for postal operators, it is less than clear about the extent to which conditions relating to 'quality, availability, and performance' may be attached such authorisations. This study suggests that in a few cases conditions have been introduced, or threatened, that could impede full market opening. Such conditions do not appear necessary to maintain universal services or user protection. We suggest, therefore, that the Postal Directive should be revised to provide clearer limits on the extent to which conditions relating to quality, availability, and performance which may be attached to authorisations.

### 3.5 Compliance and statistical transparency

*The ERGP and the Commission should collaboratively define standard statistical accounts for the collection of basic market data from all postal operators.*

Collection of data in the postal sector appears inadequate to the needs of the EU. Although the Third Postal Directive obliged postal operators to provide compliance and statistical data to NRAs, it did not explicitly oblige NRAs to collect the data nor ensure the comparability of data collected from different Member States. The regular collection

of standardised data is necessary to identify which policies are working and which are not. Moreover, without standardised data Member States cannot learn from each other, and the future cannot be informed by lessons from the past. The policy challenges raised by the rapid growth of e-commerce and parcel markets present but one obvious current example of the need for better data. We recommend that NRAs should be obliged to collect a minimum level of compliance and statistical data from both USPs and other postal operators, according to categories defined at EU level (and notably including parcel data). Standardised data categories should be developed collaboratively by the Commission and the European Regulators Group for Postal Services.

*To facilitate a better understanding of the effects of postal policy on employment, NRAs should periodically gather relevant employment statistics from all postal operators*

The role of the postal sector in labour markets, and employment conditions in the postal sector have changed considerably with postal reform. In order to allow more effective monitoring of employment trends in the postal sector, NRAs should be obliged to gather relevant statistics about postal sector employment from all postal operators.

### 3.6 Improved applications of competition law

*The Commission should update its 1998 Notice on the application of competition rules to the postal sector.*

The application of competition law is important in the postal sector given its strong economies of scale, and oligopolistic nature. To signal forceful application of the different parts of competition law and increase legal certainty, the Commission could update its 1998 Notice on the application of competition rules to the postal sector. In particular, the Commission could clarify the treatment of postal rebates and of cost standards in light of recent case-law and its 2008 Priorities Guidelines in Applying Article 102 TFEU, and the application of competition rules to cross-borders postal services (see 3.3 above).

*The Commission should encourage formal cooperation between NRAs and NCAs.*

Given the need of an extensive application of competition policy and the existence of NRAs with detailed knowledge of the sector, good governance requires a close collaboration between the authorities in charge of the implementation of competition law and the NRAs. Such cooperation should be formalized in agreements or memoranda of understanding between both authorities, as it is the case in most Member States.

# 1 Introduction

## 1.1 Purpose of study

Postal services, as services of general economic interest, continue to have a central role in an effective and dynamic single European market and are vital to the wider economy. However, the role of postal services has changed as electronic communication services change traditional patterns of communication and business across Europe.

The primary legal framework for postal services in the European Union is the Postal Directive.[1] The original Postal Directive, Directive 97/67/EC, was adopted in 1997 to provide common rules that would foster a single European market in postal services and stimulate improvements in the quality of service.[2] The original Directive required Member States to ensure a basic universal postal service throughout their national territories, to set out basic guidelines for regulation of universal services, to begin a process of gradual and controlled liberalization, and to establish independent national regulatory authorities to implement the Directive. The original Directive has been strengthened by two amendments, Directive 2002/39/EC in 2002[3] and Directive 2008/6/EC in 2008.[4] The latter —– commonly referred to as the 'Third Postal Directive' —– mandated an end to postal monopolies in most Member States by the end of 2010 ''(or the end of 2012 for some Member States that were granted a possibility of derogation, which they all invoked).

The present study aims to support the Commission in making an informed assessment of the developments in the postal sector in the period 2010 to 2013. The final report will be an important element of the EU Commission's commitment to active market monitoring and establishment of beneficial future perspectives for the postal sector. Therefore, the authors hope this study will attract interest from ministries, competent national authorities as well as the global postal industry and its stakeholders, including postal users, operators, workers and associations of these stakeholder groups.

1 Section 4.1.2, below, summarizes the legal development of the Postal Directive and related legal measures. In this study, the term 'Postal Directive', without modification, refers to the *current consolidated version* of the Directive, that is, the original Postal Directive as amended by Directive 2002/39/EC and Directive 2008/6/EC. Where it is necessary to refer to the individual directives, these will be cited specifically.

2 Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, OJ L15, 21 Jan 1998, p. 14 (hereafter, 'Directive 97/67/EC').

3 Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L176, 5 Jul 2002, p. 21 (hereafter, 'Directive 2002/39/EC' or 'Second Postal Directive').

4 Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L52, 27 Feb 2008, p. 3 (hereafter, 'Directive 2008/6/EC' or 'Third Postal Directive').

The present study is fifth in a series of 'main developments' studies. One common objective of these studies has been to assist the Commission in preparing periodic reports to the European Parliament and Council on the application of the Postal Directive by summarizing developments in the sector pertaining to implementation of the regulatory framework, quality of postal service, economic and social issues, employment, and technological changes. These 'application reports' are required by Article 23 of the Postal Directive.

This report is structured into four major parts:

- Chapter 2 describes the state of postal regulation in the EU including a complete review of regulatory developments since the last main developments report, that is, for the period 2010 through 2012 and extending into the first three quarters of 2013 as much possible.
- Chapter 3 describes the state of the postal sector in the European Union including a complete account of market and economic, technological and social developments since 2009.
- Chapter 4 seeks to place these developments in the context of European postal reform and the changing nature of the postal sector, and identifies options for further modernisation of the regulatory framework for postal services.
- Chapter 5 summarizes recommendations and options for future postal policy.

Geographically, the study covers 32 countries: the 28 Member States of the European Union (including Croatia which joined the European Union in July 2013), the 3 additional Member States of the European Economic Area (Iceland, Liechtenstein and Norway), and Switzerland. An appendix to this report includes comprehensive profiles of postal regulation and postal markets in each of these countries.

The study was prepared for the Commission between November 2012 and July 2013.

## 1.2 Methodology

This study was prepared for the European Commission, Directorate General for Internal Market and Services, by WIK Consult GmbH, Bad Honnef, Germany, and led by Alex Kalevi Dieke, head of the department of Postal Services, Logistics and Transport of WIK-Consult.

The study team was supported by four external experts: James I. Campbell, Jr., an independent lawyer and consultant based in Washington, D.C., USA, carried out the major part of the legal and regulatory analysis. He worked with the study team on planning the study, as well as on the conclusions and recommendations. Professor Alexandre de Streel, Professor at CRID, the Research Centre on IT and Law of the

University of Namur, Belgium, supported the study team on aspects related to competition and state aid law. Claus Zanker, of Input consulting, a firm based in Stuttgart, Germany, worked with the study team on social and employment trends in the postal sector. Finally, Robert H. Cohen, a recognized postal economist and former technical director at the United States Postal Rate Commission, advised the study team on modelling the effects of volumes declines on the postal sector.

Research for this study was based on the following sources of information:

- An extensive online survey of national regulatory authorities, national competition authorities, and universal service providers, and follow-up research with those parties;
- Interviews with selected officials from governments, national regulatory authorities, national competition authorities, universal service providers, private postal operators, the European Commission, the Committee for Postal Regulation (CERP), PostEurop, the European Regulators Group for Postal Services (ERGP), and various associations with an interest in the postal sector;
- an economic model developed to analyse and quantify the effect of different terminal dues regimes on EU postal operators. Terminal dues are the prices postal operators charge each other for the delivery of cross-border mail;
- an economic model developed to illustrate and quantify the effects of declines in postal volume on the sector;
- an experts panel with PostEurop on the effects of volume declines on universal service providers.
- a review of legislation, literature, market statistics and other secondary materials.

The views and opinions expressed in this study are those of the authors and do not necessarily reflect the position of the European Commission.

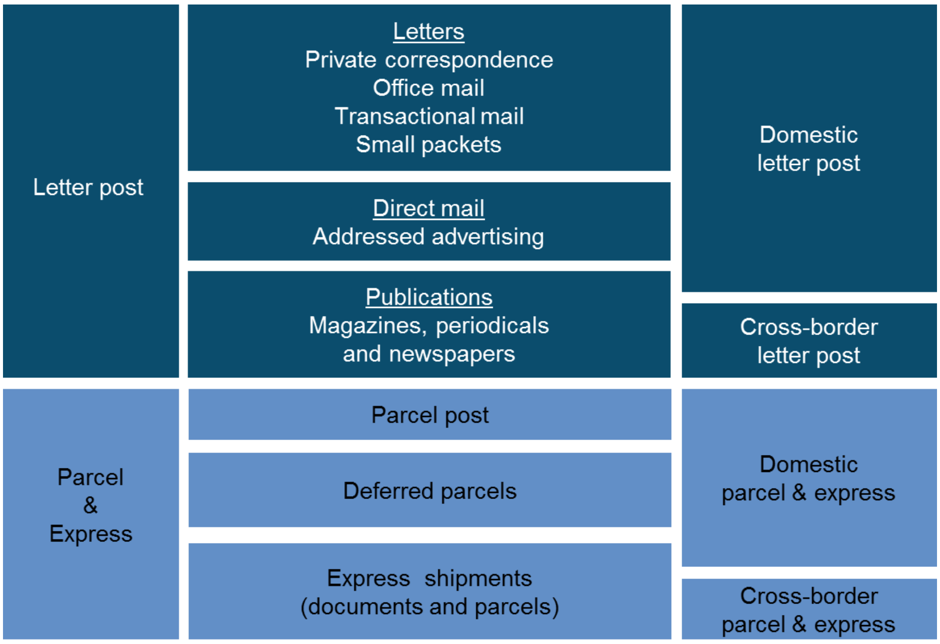
WIK-Consult presented the objectives of the study and initial findings in public workshops hosted by the European Commission in Brussels in January 2013 and May 2013. A third Public Workshop is planned for September 2013 to present final conclusions of the study.

## 1.3 Terminology: postal services and products

This study uses the term ‘‘postal services’ to refer to any general delivery service whether provided by a (former) public or private operator. The major sub-segments of postal services are the letter post and the parcel & express services. The delivery services sector also includes non-postal delivery services that consist of services for

items not prepared in a manner suitable for posting, such as, inter alia, the distribution of unaddressed mail, early delivery of newspapers and courier services.

Figure 1-1 Segmentation




Source: WIK-Consult.

Figure 1-1 outlines the postal services segments used in this report.

The "letter post' segment refers collectively to postal services for the collection and delivery of letters, direct mail and publications to national (domestic letter post) and international destinations (cross-border letter post).

The postal term "letter' comprises private and business correspondence. Private correspondence includes, for example, personal greetings and written correspondence with public authorities and businesses . Private correspondence forms the C2X (consumer to consumer/business) mail stream. Business correspondence includes office mail and transactional mail sent by companies and public institutions (both subsumed under the term 'business'). Office mail includes written correspondenc with customers, suppliers and public authorities while transactional mail comprises periodic (mass) mailings to private and business customers, often periodically, for example, bank statements, notifications and invoices. Business correspondence is part of the 'B2X' mail stream (business to consumer/business).

Direct mail includes printed advertisements that are addressed and personalised without altering the nature of the message. Publications, also called 'periodicals', refers

to newspapers, magazines and subscription publications (delivered by a postal operator) as well as customer newsletters or magazines and reports sent by large institutions and companies (for example, as part of their customer care programme). Both direct mail and publications are primarily sent by public and private institutions and form part of the 'B2X' mail stream.

'Small packets' is a term used by public postal operators to refer to parcels weighing less two kilograms which do not contain correspondence, direct mail, or periodicals but which are handled together with such items. Small packets are usually considered to be part of the letter post, so volume and revenue figures of universal services providers for the letter post in this study may therefore include small packets.

In the report, as in the Postal Directive, unaddressed advertising is not considered part of the letter post. However, since unaddressed advertising can be a low-cost substitute to addressed direct mail, we will take unaddressed advertising mail into consideration. Incumbent postal operators distribute unaddressed items (together with letter post items or in separate distribution networks operated by subsidiaries). They usually report revenues and costs of this activity as a part of their mail business.

The ''parcel & express' segment includes delivery services for the collection and delivery of documents and goods to national and international destinations.

In this report we assign 'parcel post' services to the parcel & express segment. Parcel post is the traditional parcel service provided by former postal administrations. Much of the parcel post consists of parcels tendered by individual customers at the counter of a local post office (so-called 'counter parcels'). Over the years, universal service providers increasingly offer parcel services for business customers (pick-up services).

Parcel services are collection, transports, and delivery of largely standardised packages and usually have a non- guaranteed delivery time of 2-3 days (domestically). Standard parcels are mostly transported by road based on a network of mostly scheduled, multi-stop delivery trips. Because of their longer transit time compared to express shipments, parcel services are also referred to as ''deferred services' and are economically priced. The maximum weight of parcels is considered to be around 30 kilograms across Europe. This limit reflects the maximum weight that can be handled by one man. Traditionally, parcel services particularly of private operators have a strong position in the B2B (business to business) market. Within the last decade, B2C (business to consumer) parcel services have gained substantially in importance.

Express services exceptionally rapid and reliable delivery services for all types of time-sensitive documents and parcels. Express service providers usually promise delivery by a specific day and time, generally the first business day after collection. On-time delivery is usually guaranteed in some manner. Express service providers usually employ aircraft for transportation over more than a few hundred kilometres, often using

their own dedicated air transportation networks. Express services are mainly used by business customers with shipments to national and international destinations. The distinction between parcel or deferred service, on the one hand, and express services, on the other, varies substantially between Member States.

## 1.4 Acknowledgements

WIK-Consult and the individuals in our project team gratefully acknowledge the constructive assistance provided by the entire Unit E.3 team (Online and Postal Services) within DG Internal Market and Services of the European Commission. In particular, we want to thank Kristin Hentschel (who managed this project), Werner Stengg (Head of Unit), Denis Sparas, Robert Pochmarski, and Peter Curran for clear guidance, constructive comments and support, and fruitful discussions throughout the project.

We are also deeply indebted to the many individuals in the 32 national regulatory authorities, national competition authorities, and universal service providers who generously contributed their time and expertise in responding to our extensive questionnaire survey and many follow up inquiries. Without their invaluable assistance, this study would have been literally impossible. Our study has been improved as well by valuable input received from many other persons in personal interviews and public workshops. These additional contributors included postal customers; postal, parcel, and express operators; postal employees and their unions; and industry associations from outside the postal sector.

While gladly acknowledging the assistance of all, WIK-Consult is, of course, solely responsible for the final report, including any errors it may contain.

# 2 Regulatory Developments

This chapter summarises the status of postal regulation in the 28 EU Member States, the 3 non-EU EEA Member States, and Switzerland, as of mid-2013. Notable developments since the close of the previous Main Developments report, approximately the beginning of 2010, are highlighted.[5]

## 2.1 Legal and regulatory framework

### 2.1.1 Transposition of Third Postal Directive

In 2008, the Third Postal Directive (Directive 2008/6/EC) substantially revised the Postal Directive as it stood after amendment by the Second Postal Directive (i.e., Directive 67/97 as amended by Directive 2002/39). The Third Postal Directive confirmed the decision to repeal all postal monopoly laws, but it also postponed the date from what had been preliminarily agreed in the Second Postal Directive. For most Member States, the implementation date for the Third Postal Directive was 1 January 2011. Eleven Member States (CZ, CY, EL, HU, LT, LV, LU, MT, PL, RO, SK) were granted a two-year extension, until 1 January 2013.[6] In addition to completing liberalisation, the Third Postal Directive modified other provisions of the Postal Directive to render them more compatible with 'full market opening'. Revisions and additions included changes in the manner in which universal service could be ensured and financed, opening the 'postal infrastructure' (address database, etc.) to multiple operators, strengthening the information collection authority of national regulatory authorities, and extending consumer protection provisions.

Since 1 January 2010, Member States have continued to revise their postal legislation at a remarkable pace. More than two-thirds of all EU Member States have enacted new primary postal laws or major amendments to pre-existing laws. As of 1 May 2013, all Member States have adopted legislation to transpose the Third Postal Directive into national law, except Cyprus and Romania.[7] Although it did not join the EU until 1 July 2013, Croatia also implemented the Third Postal Directive as of 1 January 2013. In some cases, however, questions may arise as to whether these measures constitute a complete transposition of the Directive. Questions concerning implementation of specific provisions of the Postal Directive are discussed in the following sections of this chapter.

---

5 Copenhagen Economics, *Main Developments in the Postal Sector (2008–2010)* (Nov 2010).

6 For three non-EU Member States of the EEA, the effective date of the Third Postal Directive will be determined by a decision by the EEA Joint Committee. See Agreement on the European Economic Area, OJ L1, 3 Jan 1994, p. 3, as amended, Article 98 (providing for amendment to Annex XI).

7 Romania has adopted a temporary Government emergency ordinance.

None of the three non-EU EEA Member States — Iceland (IS), Lichtenstein (LI), and Norway (NO) — have transposed the Third Postal Directive. The deadline for these EEA Member States to implement the Postal Directive was to be determined by the EEA Joint Committee.[8] However, on 23 May 2011, Norway informed the EU that it intended to exercise a reservation against the Third Postal Directive. Norway's announcement was unprecedented. It was the first time in EEA history that an EEA Member State had threatened to exercise a reservation. The legal consequences of a reservation are uncertain, but a reservation by Norway would apply to all three non-EU EEA Member States. Norway's announcement therefore triggered discussions among the non-EU EEA States as well as between them and the EU. These talks are still ongoing.[9]

Case study 2-1 NRA report on implementation of the Postal Directive in Spain

The Third Postal Directive was formally transposed by Law 43/2010 in Spain at the end of 2010. In a 2011 report, the Spanish competition authority CNC reviews the status of implementation of the Third Postal Directive in Spain and highlights shortcomings of the current law compared to the objectives of the Directive.

Major criticisms pointed out by CNC are:[10]

First, the designation of Correos as universal service provider for a period of 15 years is, in the view of CNC, not in accordance with the Directive. The Directive requires to take into account the principles of transparency, non-discrimination and proportionality in the procedure of designation. According to CNC, a justification for the extraordinarily long duration of the designation period is lacking. The long-term designation would also effectively foreclose the option to introduce competition for the provision of universal services. Further, the designation procedure itself is not deemed to have been open and transparent.

Second, CNC finds that the 2010 postal law expands the USO without justification. The law expanded the USO also on parcels weighing between 10 and 20 kg, resulting in a VAT exemption for an even larger part of the market. Apparently, the expansion of the USO had not been included in the Draft Bill for the 2010 postal law on which CNC (and other parties) had taken the opportunity to comment. In light of changing communication behaviours and declining mail volumes, CNC rather favours an approach to limit the extent of the USO and considers this more in accordance with the Directive than the extensive USO definition in the 2010 postal law.

Third, the system for calculating a potential unfair financial burden creates distortions in the view of CNC. Not only is the exemption from VAT further expanded under the current postal law to the whole universal service area (whereas it was restricted to the reserved area under the previous framework). Also, the USP is exempt from 'any tax levied on UPS-related activities, except for the corporate income tax' (CNC, 2011, p. 48). CNC considers this exemption as a compensatory right that is established by law without having verified that the USO creates an unfair financial burden, as required by the Directive.

---

**8** See Agreement on the European Economic Area, OJ L1, 3 Jan 1994, p. 3, as amended, Article 98 (providing for amendment to Annex XI).

**9** See generally, Annie Bersagel, 'Norway's Planned Reservation of the Third European Postal Directive and the Future of the European Economic Agreement' (2012), Stanford-Vienna European Union Law Working Paper No. 5; Council of Europe, 'Conclusions of the 38th meeting of the EEA Council, Brussels, 26 Nov 2012' (press release 492, 26 Nov 2012).

**10** Spain, Comisión Nacional de la Competencia, *The new regulatory framework for the traditional postal sector in Spain* (Mar 2011).

Fourth, administrative notices issued by government institutions as well as court notices in Spain can only be delivered by postal operators who fulfil the presumption of veracity and certification. Correos is the only postal operator whose presumption of veracity and certification is granted by law. As a consequence, other postal operators may not bid for delivery of government notices, and competitors are at least disadvantaged concerning the delivery of court notices. In the view of CNC, this causes a distortion of competition on delivery of government and court notices.

### 2.1.2 Allocation of authority within Member States

#### 2.1.2.1 Governance of the postal sector

Concentration of all governmental and operational authority over the postal system in a single government ministry is no longer considered desirable or acceptable. Such was the practice for almost all of the twentieth century. Prior to the 1980s, most Member States vested complete responsibility for the national postal and telecommunications systems in a ministry referred to generically as the PTT (i.e., the ministry for post, telephone, and telegraph). Postal and telecommunications activities of the PTTs were separated in the last decades of the twentieth century due to the pressure of new technologies and changing business practices. Governments also gave their national post offices more flexibility in matters of commerce and governance in order to cope with increased competition. At the same time, concerns for efficiency and competitive fairness required separation of the government's regulatory responsibilities from its policymaking authority over the sector.

The ideal of a 'level playing field' has thus led to an allocation of governmental authority over the postal sector among several State authorities. Although there are variations among Member States, State authorities that participate in governance of the postal sector typically include (i) a ministry responsible for public policies towards the postal sector (the 'postal ministry'), (ii) a national regulatory authority with jurisdiction over the postal sector ('NRA'), and (iii) a national competition authority ('NCA'). In some Member States, there is also a separate authority which exercises the rights of ownership of a public postal operator (including, for example, the right to appoint a board of directors) or public ownership is exercised by a different ministry than the 'postal ministry', e.g. the Ministry of Finance. Overarching all of these State authorities is the Council of Ministers (or an equivalent executive body) and the Parliament, the ultimate sources of legal authority. Finally, in most, but not all Member States, there is a 'public postal operator' owned wholly or partly by government and (except in Germany) designated by government as the 'universal service provider' (USP). In the two Member States (MT, NL) where the public postal operator is 100 per cent privatised, the USP is, technically, the *former* public postal operator.

#### 2.1.2.2 Separation of the postal ministry and ownership authority

In this study we shall use the term ‘postal ministry’ to refer to the ministry responsible for development of public policy towards postal services. The title and portfolio of this ministry varies among Member States. A list of postal ministries is presented in Table 2-1.

Table 2-1 Ministry with primary responsibility for postal services

| | Postal ministry | Acts as owner of PPO? |
|---|---|---|
| AT | Federal Ministry for Transport, Innovation and Technology | No |
| BE | Deputy Prime Minister and Minister of Economy, Consumer Affairs and the North Sea | No |
| BG | Ministry of Transport, Information Technology and Communications | Yes |
| CY | Ministry of Communication and Works | Yes |
| CZ | Ministry of Industry and Trade (MIT) | No |
| DE | Federal Ministry of Economics and Technology | No |
| DK | Ministry of Transport | Yes |
| EE | Ministry of Economic Affairs and Communications | Yes |
| EL | Ministry of Development, Competitiveness, Infrastructure, Transport and Networks | No |
| ES | Minister of Foment | No |
| FI | Ministry of Transport and Communications | No |
| FR | Ministry for Industrial Renewal | No |
| HR | Ministry of Sea, Tourism, Transport and Development | --- |
| HU | Ministry of National Development | Yes |
| IE | Department of Communications, Energy and Natural Resources | Yes |
| IT | Ministry of Economic Development - Department of Communications | No |
| LT | Ministry of Transport and Communications of Lithuania | Yes |
| LU | Media and Communications service | No |
| LV | Ministry of Transport | Yes |
| MT | The Minister for the Economy, Investment and Small Business. | No |
| NL | Ministry of Economic Affairs | No |
| PL | Ministry of Administration and Digital Affairs of Poland. | Yes |
| PT | Ministry of Economy and Employment/ Secretary of State of Public Works, Transport and Communication. | No |
| RO | Ministry for the Information Society | Yes |
| SE | The Ministry of Enterprise | No |
| SI | Ministry of Economic Development and Technology | Yes |
| SK | Ministry of Transport, Construction and Regional Development of the Slovak Republic | Yes |
| UK | Department for Business, Innovation and Skills (BIS) | Yes |
| IS | Ministry of the Interior. | No |
| NO | Ministry of Transport and Communications | Yes |
| CH | Federal Office of Communications | No |

Source: WIK Survey

The Third Postal Directive further clarified the high degree of separation required between governmental decisions and commercial decisions by addressing the exercise of ownership rights. The amended Article 22 requires: ‘Member States that retain

ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.' This survey therefore inquired how governments today exercise control over their public postal operators. Table 2-1 indicates whether the postal ministry also exercises the government's ownership rights in a public postal operator.

The primary right of ownership is the power to appoint the top management authority of the public postal operator, generally the board of directors (or the 'supervisory board in a two-tiered board system). In at least ten Member States (BG, DK, IE, LT, LV, PL, RO, SK, UK, NO), the board of directors is appointed by the postal minister, creating a potential conflict of interest between the responsibilities of ownership and policy making in the public interest. In three Member States (LT, LV, PL), the postal minister may dismiss the directors at his or her discretion and appoint the chief executive officer of public postal operator. With such authority, the postal minister appears to be, in effect, the supreme manager of the public postal operator.

In other Member States, ownership of the public postal operator appears better separated from the authority of the postal minister. In many the board is appointed by the full Council of Ministers (BE, ES, IT, LU, SI, also CH). An especially clean separation of regulatory authority and ownership authority is provided in Hungary. The Hungarian State Holding Company exercises ownership authority over the public postal operator and other entrepreneurial assets of the Hungarian State. The holding company was established to provide market-based management of state assets.[11]

#### 2.1.2.3 Allocation of regulatory authority between legislator, minister, and NRA

The Postal Directive obliges Member States to regulate specific features of the postal sector to ensure provision of a universal service meeting certain criteria, to permit undistorted competition, and to protect the rights of users. Each Member State is free to implement the Directive in a manner appropriate to its needs and traditions as long as its national legislation is consistent with Directive and other applicable EU legislation (e.g., the competition rules). In general, there are three types of legal measures that may be employed, each promulgated by a different type of State authority:

- legislation, i.e., measures are adopted by the parliament or by the government as a whole, e.g., by a council of ministers;
- ministerial regulation, i.e., measures are adopted by a single minister; and
- NRA decision, i.e., measures are adopted by an independent regulatory body.

The allocation of regulatory functions among State authorities is significant because different types of authorities make decisions differently. Legislation is the most

11 See Hungarian State Holding Company (MNV Zrt.). http://www.mnvzrt.hu/en.

cumbersome decision making process and is usually reserved for the most politically sensitive issues, that is, for issues which require input from all significant interest groups before a decision can be made. The Council of Ministers likewise provides a broadly based and relatively inflexible forum, suited to decisions of a fundamentally political nature. Decisions by a single minister may be both political and flexible. Authorising an expert independent regulator to decide an issue, while not wholly free from political considerations, normally provides the most objective and impartial means of decision making. The allocation of authority thus reflects, at least to a degree, the extent to which postal policy is to be determined by political criteria or by objective economic and legal criteria.

The Postal Directive addresses the allocation of authority among State authorities in several ways. Article 22 requires that Member States 'designate one or more national regulatory authorities for the postal sector' and to provide that NRAs 'have as a particular task ensuring compliance with the obligations arising from this Directive'. Article 22 further requires that National Regulatory Authorities (NRAs) must be 'legally separate from and operationally independent of the postal operators'. The Third Postal Directive emphasised that

> In accordance with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authorities, thereby ensuring the impartiality of their decisions.[12]

The Postal Directive also requires that specific applications of the Postal Directive must be consistent with 'principles of transparency, non-discrimination and proportionality' (Articles 4, 7) and that specific procedures or determinations should be 'transparent, accessible, non-discriminatory, proportionate, precise and unambiguous' (Article 9) or 'transparent, proportional and non-discriminatory' (Article 11a) or taken in an 'objective, transparent, non-discriminatory and proportionate manner' (Annex 1). The implications for allocation of authority are self-evident: decisions which demand a high level of objectivity and impartiality should be delegated to independent and expert NRAs.

In this study, we asked Member States to indicate which types of legal measures are used to determine certain key policy issues. In particular, which measures —

- specify the frequency of delivery for universal services?
- specify the maximum weight of parcels within the universal service?
- establish the requirements and conditions for general authorisations or licences, if any?

12 Directive 2008/6, Recital 47.

- establish the procedures or requirements for a fund that shares the net cost of universal service obligations among providers of services and/or users, if any?
- require the USP to maintain prices for universal services that are uniform throughout the national territory? and
- define the quality of service standards which the USP must attain in the provision of universal service (e.g. routing time targets, minimum criteria for access points etc.)?

Although development of basic national postal policies cannot be committed to independent NRAs, most postal policy issues depend upon factual questions which should be answered expertly and impartially. For example, the appropriate level of the universal service is a political question, but the costs of service and needs of society associated with a specific level of universal service can be and should be determined as objectively as possible.

Table 2-2 Authority determining policy decisions required by the Postal Directive

| | Frequency of US | Weight limit US parcels | Authorisation procedures | USO fund | Uniform tariff rules | USO quality standards |
|---|---|---|---|---|---|---|
| AT | A | A | A | AB | A | A |
| BE | A | A | AB | F | A | AB |
| BG | AD | A | A | F | A | D |
| CY | AD | A | A | AD | AD | AD |
| CZ | AD | AD | AD | AD | E | AD |
| DE | C | C | A | A | F | C |
| DK | ABCD | AD | ACD | AC | AD | ACD |
| EE | A | A | A | AG | A | A |
| EL | AB | AB | ABD | AB | A | AB |
| ES | ABD | A | ABCD | ABD | AG | B |
| FI | A | A | AB | A | A | AB |
| FR | A | A | A | A | A | C |
| HR | D | E | A | --- | A | E |
| HU | A | A | A | AG | A | AG |
| IE | A | A | A | A | A | AD |
| IT | A | A | B | B | B | B |
| LT | AC | A | AD | F | A | AC |
| LU | A | A | A | A | A | F |
| LV | D | A | D | A | A | D |
| MT | A | A | A | AC | A | D |
| NL | A | A | F | F | A | A |
| PL | AB | A | A | A | A | AB |
| PT | A | A | A | A | AG | AG |
| RO | AD | AD | AD | AD | AD | AD |
| SE | A | A | A | F | A | AB |
| SI | A | A | A | AD | A | AD |
| SK | AD | AD | A | AD | F | AD |
| UK | ADE | ADE | A | A | AD | AD |
| IS | ACD | AC | AC | AC | AC | AC |
| NO | A | C | AC | A | G | CG |
| CH | AB | B | AB | F | AB | B |

Source: WIK Survey Table [21331]

Note: Key all columns: A = Postal law includes specific criteria; B = Regulation, decree, or ordinance of Prime Minister or Council; C = Regulation, decree, or ordinance of the Postal Ministry; D = NRA regulation or authorisation requirement; E = Discretion of the USP(s); F = Not applicable; G = Other.

Our survey necessarily offers only broad indications of the politicisation or depolitisation of regulatory decision-making. Nonetheless, it provides context when considering the implementation of specific provisions of the Directive. As Table 2-2 indicates, issues of postal policy are most often resolved by primary legislation (indicated by an 'A' in the table) or by regulations adopted by the government as a whole ('B'). That is, they are decided on political rather than technical grounds. What is notable, in a positive way,

are cases in which Member States have given independent regulators significant discretion to determine the specifics of policy within a framework of legislative guidelines ('D'). Eight Member States (CY, CZ, DK, ES, LV, RO, SK, UK) report a significant role by the NRA, suggesting the potential for more objective input into the policy making process. On the other hand, in 3 Member States (DE, IS, NO), delegating substantial policy authority to the postal ministry ('C') without NRA involvement may suggest the possibility of too much political influence on postal policy. In 11 Member States (AT, BE, EE, FI, HU, IT, LU, NL, PL, PT, SE, and CH) neither the postal ministry nor the NRA appears to have a significant role is determining postal policy issues because the specifics of postal policy are determined by legislation. In these Member States, it may be difficult to adapt postal policy to requirements of a rapidly changing postal market.

Assignment of administrative tasks — such as granting authorisation, regulating prices and services, verifying accounts — can be analysed in a similar matter.[13] Most Member States commit almost all administrative functions to the NRA. It is the exceptions that raise possible red flags. For example, in two Member States (IT, NO), authorisation of competitors to the USP are handled by the postal ministry, not the NRA. In 3 Member States (FI, IT, LV), the postal ministry administers a fund, if needed, to compensate the USP for net costs incurred in providing universal service. In 2 Member States, (AT, PL), the postal ministry receives user complaints.

### 2.1.3 Legal organisation of the public postal operator

The Postal Directive prescribes no rule on whether Member States should corporatise or privatise the national public postal operator. Nonetheless, all public postal operators in the EU/EEA (and Switzerland) are have been corporatised — organised as corporations under normal corporate law or similar arrangements for 'state-owned enterprises' — except for the public postal operator of Cyprus, which continues to operate a ministerial department. See Table 2-3.

---

**13** Source: WIK Survey.

Table 2-3 National universal service provider

| | National universal service provider | Legal status | Govt. ownership (%) |
|---|---|---|---|
| AT | Österreichische Post AG (Austria Post) | PLC | 52.8 |
| BE | bpost (Belgian Post Group) | Other | 50 |
| BG | Български пощи (Bulgarian Post) | SOE | 100 |
| CY | Κυπριακά Ταχυδρομεία (Cyprus Post) | Govt | 100 |
| CZ | Česká pošta s.p. (Czech Post) | SOE | 100 |
| DE | Deutsche Post AG [not designated as USP] | PLC | 25.5 |
| DK | Post Danmark A/S | PLC | 100 |
| EE | AS Eesti Post (Estonian Post) | PLC | 100 |
| EL | Ελληνικά Ταχυδρομεία / ΕΛΤΑ (Hellenic Post / ELTA) | SOE | 90 |
| ES | Sociedad Estatal Correos y Telégrafos, S.A. | PLC | 100 |
| FI | Itella Mail Communications / Itella Posti Oy | PLC | 100 |
| FR | La Poste (France) | Other | 100 |
| HR | Hrvatska pošta (Croatian Post) | PLC | 100 |
| HU | Magyar Posta Zrt. (Hungarian Post Limited) | PLC | 100 |
| IE | An Post | PLC | 100 |
| IT | Poste Italiane S.p.A. | PLC | 100 |
| LT | Lietuvos paštas (Lithuanian Post) | PLC | 100 |
| LU | Entreprise des Postes et Télécommunications (P&T Luxembourg) | Other | 100 |
| LV | VAD Latvijas Pasts | Other | 100 |
| MT | MaltaPost Plc. | PLC | 0 |
| NL | PostNL | PLC | 0 |
| PL | Poczta Polska SA (Polish Post) | PLC | 100 |
| PT | CTT - Correios de Portugal, S.A. (CTT) | PLC | 100 |
| RO | Poșta Română C.N.(National Company Romanian Post) | SOE | 75 |
| SE | Posten AB | PLC | 100 |
| SI | Pošta Slovenije d.o.o. | PLC | 100 |
| SK | Slovenská pošta, a.s., Banská Bystrica | PLC | 100 |
| UK | Royal Mail Group Limited (which is a subsidiary of Royal Mail Holdings plc) | Other | 100 |
| IS | Íslandspóstur (Iceland Post) | PLC | 100 |
| LI | LIechtensteinische Post AG | PLC | 100 |
| NO | Posten Norge AS (Norway Post) | PLC | 100 |
| CH | Swiss Post | SOE | 100 |

Source: WIK Survey

In recent years, Member States have also continued to move gradually but perceptibly in the direction of privatisation. As of 1 January 2013, 2 Member States have fully privatised their public postal operators: Malta and the Netherlands. In 5 other Member States, the government owns less than 100 per cent of the public postal operator: DE (25.5%); BE (50%); AT (52.8%); RO (75%); EL (90%). In 2010, the Greek government announced it will ultimately sell 40 per cent of Hellenic Post.[14] In February 2013, Romania announced that it will sell 51 per cent of Romanian Post to a qualified

14 Greece, Ministry of Finance, 'Greece announces privatization plans', 2 Jun 2010. http://www.minfin.gr/portal/en/resource/contentObject/id/2f09efef-f916-4450-8236-de0606f1e12d [2 May 2013].

management company.[15] At least two more Member States are planning to join the privatisation trend. The British government has announced that it will privatise a majority of the ownership of Royal Mail by the end of this fiscal year by conducting an initial public offering and giving ten per cent of the ownership to employees.[16] Portugal is scheduled to sell its public postal operator, Correios de Portugal, by the end of 2013. In addition, while the public postal operators of Denmark and Sweden are 100 per cent government-owned, neither is wholly owned by its national government. Instead, both Post Denmark and Sweden Post are owned by Post Nord, a holding company owned 60 per cent by the Swedish government and 40 per cent by the Danish government.

### 2.1.4 National Regulatory Authorities

#### 2.1.4.1 Establishment of NRAs

As required by Article 22 of the Postal Directive, each EU/EEA Member State has established an independent National Regulatory Authority (NRA) for the postal sector. Switzerland has also created an independent NRA. In all Member States except Spain and Slovakia (and Switzerland), the NRA regulates multiple sectors. In almost all cases, regulation of the postal and electronic communications sectors are combined. The only exception is Denmark, where the Danish Transport Authority regulates road, rail, and air transport in addition to postal services. Six postal/electronic communications regulators also regulate other sectors. A list of postal NRAs is presented in Table 2-4.

---

**15** Romania, Ministry for the Information Society, 'Privatisation Announcement concerning Romanian Post (25 Feb 2013). http://www.mcsi.ro/Minister/Anunturi/PRIVATISATION-ANNOUNCEMENT-concerning-Romanian-Pos (access, 2 May 2013). In late May, however, the ministry announced that privatisation process would be postponed for six months due to concerns expressed by potential investors. See Post & Parcel, 'Romanian Post privatisation process put back six months' (31 May 2013). http://postandparcel.info/56125/news/companies/romanian-post-privatisation-process-put-back-six-months (access, 3 Jun 2013).

**16** United Kingdom, Parliament, Statement of Vince Cable, Secretary of State for Business, Innovation and Skills, in the House of Commons, 10 July 2013, www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130710/ debtext/130710-0001.htm. The size of the initial public offering has not yet been determined.

Table 2-4 National Regulatory Authority for postal services

| | National regulatory authority | NRA short name | Other sectors regulated |
|---|---|---|---|
| AT | The Austrian Regulatory Authority for Broadcasting and Telecommunications | RTR | BG |
| BE | Belgian Institute for Postal Services and Telecommunications | BIPT | B |
| BG | Communications Regulation Commission | CRC | B |
| CY | Office of the Commissioner for Electronic Communication and Postal Regulation | OCECPR | B |
| CZ | Czech Telecommunication Office | CTO | B |
| DE | Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways | BNetzA | BCEF |
| DK | Danish Transport Authority | --- | FG |
| EE | Estonian Competition Authority | - | BCDEF |
| EL | Hellenic Telecommunications And Post Commission | EETT | B |
| ES | Postal Sector's National Commission | CNSP | A |
| FI | Finnish Communications Regulatory Authority | FICORA | B |
| FR | Regulation Authority for Electronic Communications and Posts | ARCEP | B |
| HR | Croatian Post and Electronic Communications Agency | HAKOM | B |
| HU | National Media Communications Authority | NMHH | BG |
| IE | Commission for Communication Regulation | ComReg | BG |
| IT | Regulatory Authority for Communications and Media | AGCOM | B |
| LT | Communications Regulatory Authority of the Republic of Lithuania | RRT | B |
| LU | Luxembourg Institute for Regulation | ILR | BCEFG |
| LV | Public Utilities Commission | PUC | BCDEF |
| MT | Malta Communications Authority | MCA | BG |
| NL | Authority for Consumers and Markets | ACM. | B |
| PL | Office of Electronic Communications | UKE | B |
| PT | National Communications Authority | ICP-ANACOM | B |
| RO | National Authority for Management and Regulation in Communications | ANCOM | B |
| SE | The Swedish Post and Telecom Authority | PTS | B |
| SI | Postal and Electronic Communications Agency of the Republic of Slovenia | APEK | BFG |
| SK | Postal Regulatory Office | PRÚ | A |
| UK | Office of Communications | Ofcom | BG |
| IS | Post and Telecom Administration | PTA | B |
| NO | Norwegian Post and Telecommunication Authority | NPT | B |
| CH | Federal Postal Services Commission | PostCom | A |

Source: WIK Survey [Table 21511]

Note: Other sectors regulated: (A) None; (B) Telecommunications; (C) Energy; (D) Water; (E) Gas; (F) Railway; (G) Other.

Since 2010, three major NRAs have been comprehensively reorganised. In the UK, the Postal Services Act 2011 transferred responsibility for regulation for postal services after 1 October 2011 from Postcomm (established in 2000), to Ofcom, the NRA for electronic communications. Pursuant to the act, Ofcom began a bottom up reconsideration of postal regulation in the UK. On 27 March 2012, Ofcom put in place a substantially revised regulatory framework for the British postal sector.

In the Netherlands, on 1 January 2013, the Netherlands Authority for Consumers and Markets (ACM) was created by combining the former NRA for the postal and electronic communications sectors (the Independent Post and Telecommunications Authority of the Netherlands or 'OPTA') with the Netherlands Competition Authority (NMa) and the Netherlands Consumer Authority.[17] As of 1 June 2013, ACM has sought public comment on a broad statement of its regulatory approach but has taken no steps specific to postal regulation in the Netherlands.

In Spain, Parliament decided in June 2013 to merge the NCA (Comisión Nacional de la Competencia) with the postal NRA (CNSP) as well as sector regulators for electronic communications, energy, media, airports, and railways. The new authority will be called 'Comisión Nacional de los Mercados y la Competencia' (National Commission of Markets and Competition) and should be established by October 2013 according to legal provisions.[18]

#### 2.1.4.2 Independence of NRAs

Regulatory independence is a cornerstone of the Postal Directive.[19] As noted above, Article 22 of the Postal Directive requires that NRAs be 'legally separate from and operationally independent of the postal operators'.

Impartiality and independence are intangible qualities that do not necessary require — and are not necessarily ensured by — a specific organisational arrangement. Nonetheless, Member States can adopt organisational arrangements that foster the independence and impartiality of NRAs. For example, authority to appoint the head(s) of the NRA can be vested in a minister other than the minister responsible for overseeing the operations of a public postal operator. Similarly the minister responsible for the public postal operator should not control the budget the NRA nor review its decisions. The regulator should have judicial-like independence from the government, especially if the government owns a public postal operator. Independent judgement is further encouraged by insisting that head(s) of the NRA — i.e., the individual or committee members that are ultimately responsible for decisions of the NRA — should meet minimum qualifications of professional competence. Head(s) of the NRA should have

**17** See the ACM Internet site at https://www.acm.nl/en/.

**18** Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia.

**19** In an important decision in 2001, the Commission held that Article 22 requires Member States to ensure 'thanks to a proper separation of duties, that the tasks of economic and financial monitoring, on the one hand, and of supervision of [the USP], on the other, are carried out completely independently one of the other'. Commission Decision 2002/344/EC of 23 October 2001 on the lack of exhaustive and independent scrutiny of the scales of charges and technical conditions applied by La Poste to mail preparation firms for access to its reserved services, OJ L 120, 7 May 2002, p. 19, at paragraph 29. Similarly, in 2002, the Commission warned France that it was not consistent with Article 22 to vest a single minister with responsibilities for (A) overseeing the state's property interests in a public postal operator and its economic and financial performance and (B) the responsibility for regulating the postal sector. European Commission, 'Postal services: the Commission asks France to reinforce the independence of its national regulatory authority for the postal sector', IP/02/932 (6 Jun. 2002).

fixed terms of office lasting several years and enjoy legal protection against dismissal without cause. All things being equal, a NRA headed by a multi-member committee — like a court composed of several judges — is likely be more stable and independent than a single chief regulator. Moreover, top officials of a NRA should not be permitted to work for the public postal operator or other interested parties immediately after serving with the NRA, lest they be tempted to make decisions that will benefit future employers.

Table 2-5 Organisation of NRA

| | Number of heads | Term of office | Who appoints NRA? | Grounds to dismiss NRA head | Restrictions on post-NRA work? |
|---|---|---|---|---|---|
| AT | 3 | 5 yr | Other | Incapacity | Yes |
| BE | 4 | 6 yr | Council | Other | Yes |
| BG | 5 | 6 yr | Other | Misconduct | Yes |
| CY | 1 | 6 yr | Council | Misconduct | Yes |
| CZ | 5 | 5 yr | Council | Misconduct | No |
| DE | 3 | 5 yr | Other | Misconduct | NA |
| DK | 1 | None | Min Post | Discretion | No |
| EE | 1 | None | Min Post | Discretion | Yes |
| EL | 9 | 4 yr | Council | Misconduct | No |
| ES | 7 | 6 yr | Council | Misconduct | Yes |
| FI | 1 | 5 yr | Council | Misconduct | No |
| FR | 7 | 6 yr | Other | Incapacity | Yes |
| HR | 5 | 5 yr | Parl | --- | No |
| HU | 1 | 9 yr | Council | Incapacity | Yes |
| IE | 3 | 4 yr | Min Post | Misconduct | Yes |
| IT | 5 | 7 yr | Other | Misconduct | Yes |
| LT | 7 | 5 yr | Other | Misconduct | NA |
| LU | 3 | 5 yr | Other | Misconduct | No |
| LV | 5 | 5 yr | Parl | Incapacity | Yes |
| MT | 5 | 3 yr | Min Post | Misconduct | Yes |
| NL | 3 | 4 yr | Min Post | Other | No |
| PL | 1 | 5 yr | Council | Misconduct | NA |
| PT | 5 | 5 yr | Council | Misconduct | Yes |
| RO | 1 | 6 yr | Other | Misconduct | Yes |
| SE | 1 | 6 yr | Min Post | Discretion | No |
| SI | 1 | 5 yr | Council | Misconduct | No |
| SK | 1 | 6 yr | Parl | Misconduct | No |
| UK | 9 | None | Min Post | Other | NA |
| IS | 1 | 5 yr | Min Post | Misconduct | No |
| NO | 1 | None | Min Post | Misconduct | No |
| CH | 7 | 4 yr | Council | Discretion | Yes |

Source: WIK Survey

The organisation of NRAs is summarised in Table 2-5. This table reveals several red flags which raise potential questions about the independence and impartiality of the NRA. In 9 Member States, the head(s) of the NRA are appointed by the same minister that oversees the conduct of postal policy (DK, EE, IE, MT, NL, SE, UK, IS, NO). In 4 of

these countries (DK, IE, UK, NO), the same minister appoints both the heads of the NRA and the directors of the public postal operator. In 12 Member States, the head of the NRA is a single person (CY, DK, EE, FI, HU, PL, RO, SI, SE, SK, IS, NO). In 4 Member States (DK, EE, ES, SE) and Switzerland, the postal minister may dismiss the head(s) of the NRA without cause. In 4 Member States, the NRA has no fixed term (DK, EE, UK, NO).

Table 2-6 Independence of NRA

| | Can Govt guide NRA on policy? | Some NRA decisions require Govt approval? | Can Govt suspend NRA orders? | Sources of NRA finances | Who approves NRA budget? |
|---|---|---|---|---|---|
| AT | No | No | No | ACD | Parl |
| BE | No | No | Yes | CEF | Min Oth |
| BG | No | No | No | DE | Parl |
| CY | Yes | No | No | CDE | Parl |
| CZ | No | No | No | A | Parl |
| DE | Yes | No | No | A | Parl |
| DK | Yes | No | No | ACD | Parl |
| EE | No | No | No | A | Min Post |
| EL | No | No | No | DEF | Other |
| ES | No | No | No | ACD | Parl |
| FI | No | No | No | ACE | Parl |
| FR | No | No | No | A | Parl |
| HR | No | No | No | D | Parl |
| HU | No | No | No | ACDE | Parl |
| IE | No | Yes | No | D | Min Post |
| IT | No | No | No | CDE | NA |
| LT | No | No | No | DE | Parl |
| LU | No | Yes | No | DE | Council |
| LV | No | No | No | DE | Parl |
| MT | Yes | Yes | No | BCD | Min Post |
| NL | Yes | Yes | No | BCDE | Min Post |
| PL | No | No | No | A | Parl |
| PT | No | Yes | No | CDEF | Min Post |
| RO | No | No | No | DE | Parl |
| SE | Yes | No | No | D | Min Post |
| SI | No | No | No | CDE | Council |
| SK | No | No | No | A | Parl |
| UK | Yes | Yes | No | ACDE | Min Oth |
| IS | No | No | No | D | Parl |
| NO | Yes | No | Yes | DE | Parl |
| CH | No | No | No | ACD | Other |

Source: WIK Survey

Table 2-6 summarises responses to specific questions about the authority of the government to review or ‘guide’ decisions of the NRA or control its budget. As this table shows, in some Member States NRAs are not wholly free from control by the postal

minister. Nine Member States (CY, DE, DK, ES, MT, NL, SE, UK, NO) report that the postal minister can guide or instruct the NRA on policy issues without appearing as a normal party in a public proceeding, although in the UK, guidance is limited to international relations and matters of public safety. In 7 Member States, the postal minister must approve certain NRA decisions (ES, IE, LU, MT, NL, PT, UK). For example, in Ireland and Malta designation of a USP must be approved by the postal minister. In Portugal, the activities plan and budget must be approved by the postal minister. In the U.K., a decision by Ofcom to establish a compensation fund must be approved by the postal minister. Moreover, in two Member States the postal minister can suspend NRA decisions. In Belgium, the Council of Ministers can, acting on a proposal of the postal minister, suspend the execution of decisions that violate the law or the public interest (except decisions on ex ante market regulation and litigation between operators). In Norway, the postal minister can instruct the NRA in general and individual cases (except competition cases). In 6 Member States, the postal minister must approve the NRA's budget (EE, IE, MT, NL, PT, SE).

Overall, it appears that most Member States (and Switzerland) have organised their NRAs in a manner likely to foster regulatory independence. In 6 Member States, the organisational arrangements appear to be questionable (DK, EE, ES, NL, SE, NO). In the remaining Member States, the organisation of the NRA could be significantly improved (CY, FI, IE, LU, MT, PT, SK, UK, IS, LI). Again, it must be kept in mind that these observations refer only to organisational arrangements and do not take into account cultural or personal factors which may influence the actual independence of the NRA.

#### 2.1.4.3 Resources

Recital 47 of Third Postal Directive emphasises the obligation of Member States to give NRAs adequate resources to perform their tasks: 'National regulatory authorities should be provided with all necessary resources, in terms of staffing, expertise and financial means, for the performance of their tasks.' In this survey, 20 NRAs have reported their budgets for 2011 or 2012, with 29 providing some information on total staff and/or the numbers of economists and lawyers employed. Projecting from incomplete information, we estimate that in 2012 EU/EEA NRAs spend about € 35 million and employed about 344 staff persons of which about 178 were economists or lawyers.[20] Given the uncertainties due to missing data, these figures suggest that resources for postal NRAs have changed little or decreased slightly since 2010.[21]

---

**20** Throughout this study, 'NRA budget' and 'NRA staff' refer to the resources allocated to postal regulation, not the total staff or budget of the authorities.

**21** The last Main Developments study implied that NRA resources totalled about € 38 million and 290 persons in 2009. The earlier *Role of Regulators* implied that NRA resources totalled about € 39 million and 440 persons in 2008. Copenhagen Economics, *Main Developments (2008–2010)* (2010), p. 64; WIK-Consult, *The Role of Regulators* (2009), p. 56.

The financial and personnel resources available to NRAs vary substantially among Member States.[22] Member States with larger postal sectors tend to have larger NRAs. To provide a reasonable basis for comparison, we have divided the Member States into four groups depending on the size of the USP's domestic letter post market.[23] Large postal markets (more than 5 per cent of the combined EU/EEA domestic letter post market); medium-sized markets (1 to 5 per cent); small markets (0.2 to 1 per cent); and very small markets (0.2 per cent or less). For each group, the average shares of the total EU/EEA letter post market under regulation and the average resources available to the NRA are given in Table 2-7.[24]

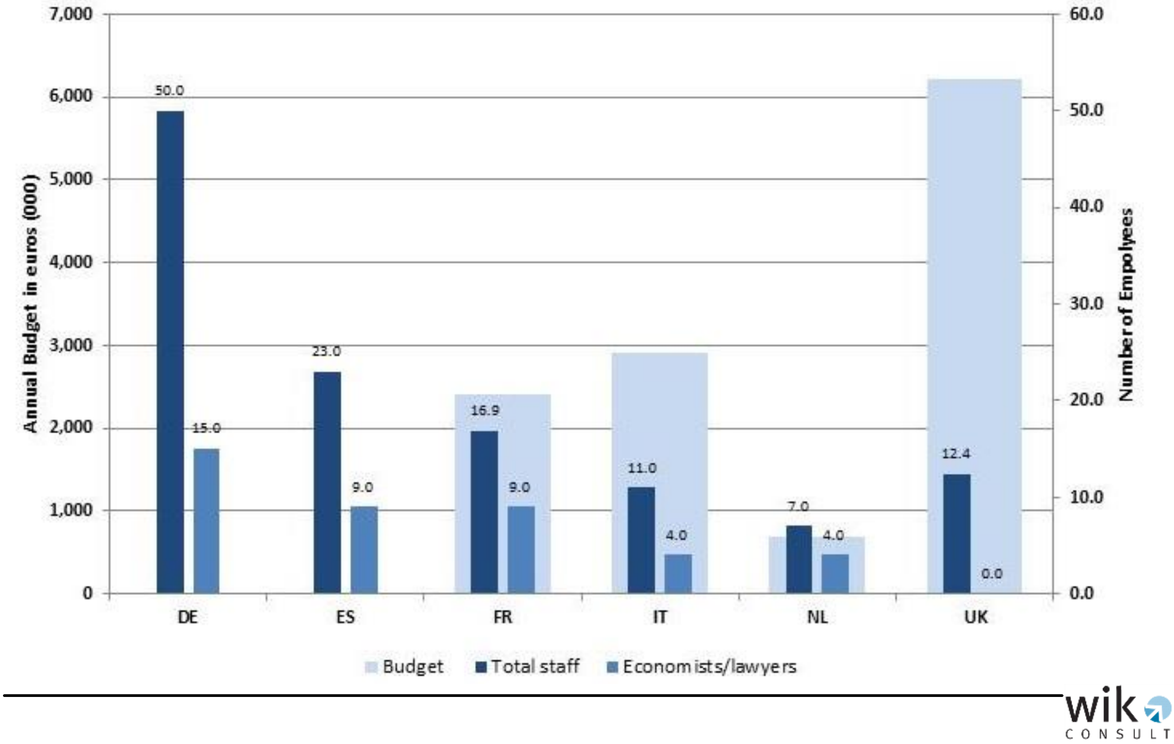
Table 2-7 Average NRA resources by EU/EEA group, 2012

| | No. MS | % EU/EEA domestic letter post | Budget (€ 000) | Total staff | Economists & lawyers |
|---|---|---|---|---|---|
| Large markets | 6 | 12.7% | 3,056 | 20.0 | 8.2 |
| Medium markets | 9 | 2.1% | 1,021 | 8.3 | 5.4 |
| Small markets | 7 | 0.6% | 700 | 13.1 | 7.7 |
| Very small markets | 8 | 0.1% | 297 | 6.3 | 3.3 |
| Totals (implied) | 30 | 100% | 34,796 | 337.3 | 178.0 |

Source: WIK Survey

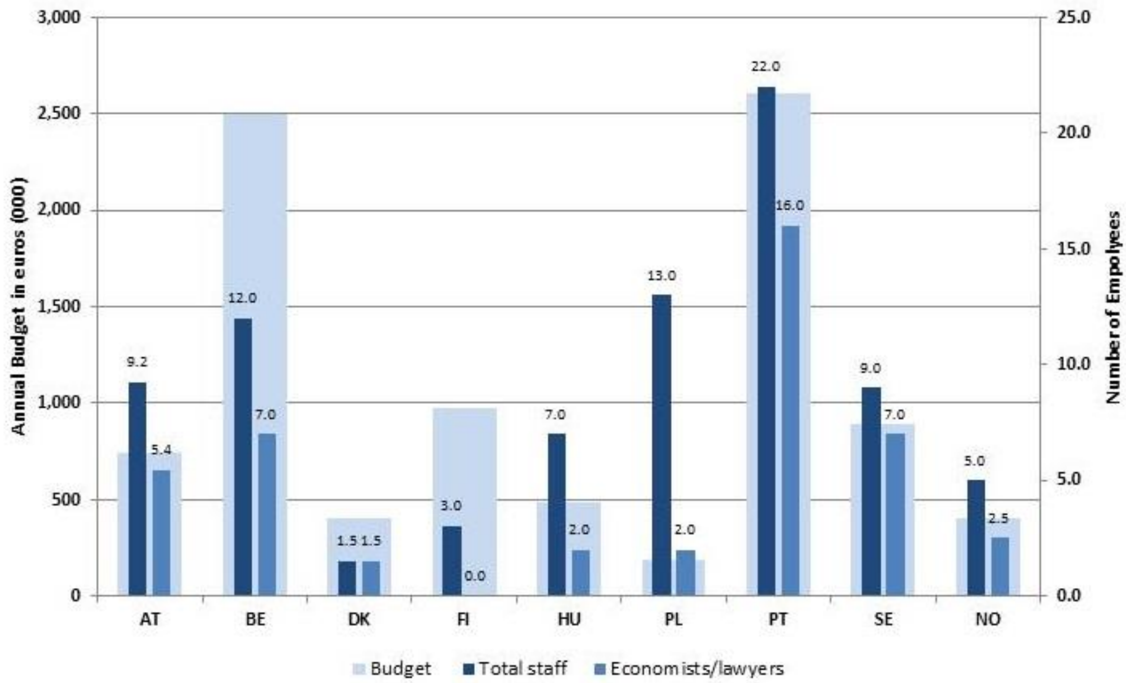
22 Source: WIK Survey.
23 Ideally, this division would be based on the total market for postal services or, alternatively, the total market for universal services, but such data is not presently available for all Member States.
24 Lichtenstein has provided no information on its NRA and is therefore omitted from this discussion.

Figure 2-1 NRA staff and resources, large markets




In the large market group there are six Member States (DE, ES, FR, IT, NL, UK). These Member States collectively account for about 76 per cent of the combined EU/EEA domestic letter post volume and 53 per cent to total budgets of the NRAs. Among these NRAs, missing data makes generalisations difficult. However, it appears that 2 Member States (IT, NL) may not provide their NRAs with adequate resources, especially in the area of technical expertise.

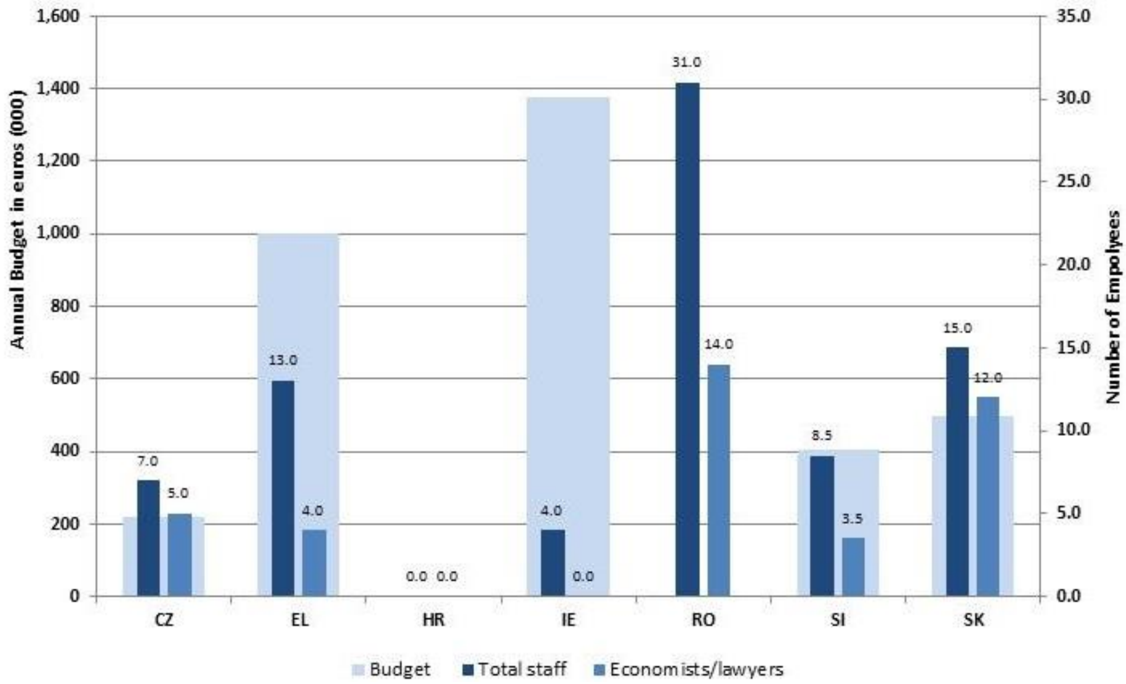
Figure 2-2 NRA staff and resources, medium-sized markets




wik CONSULT

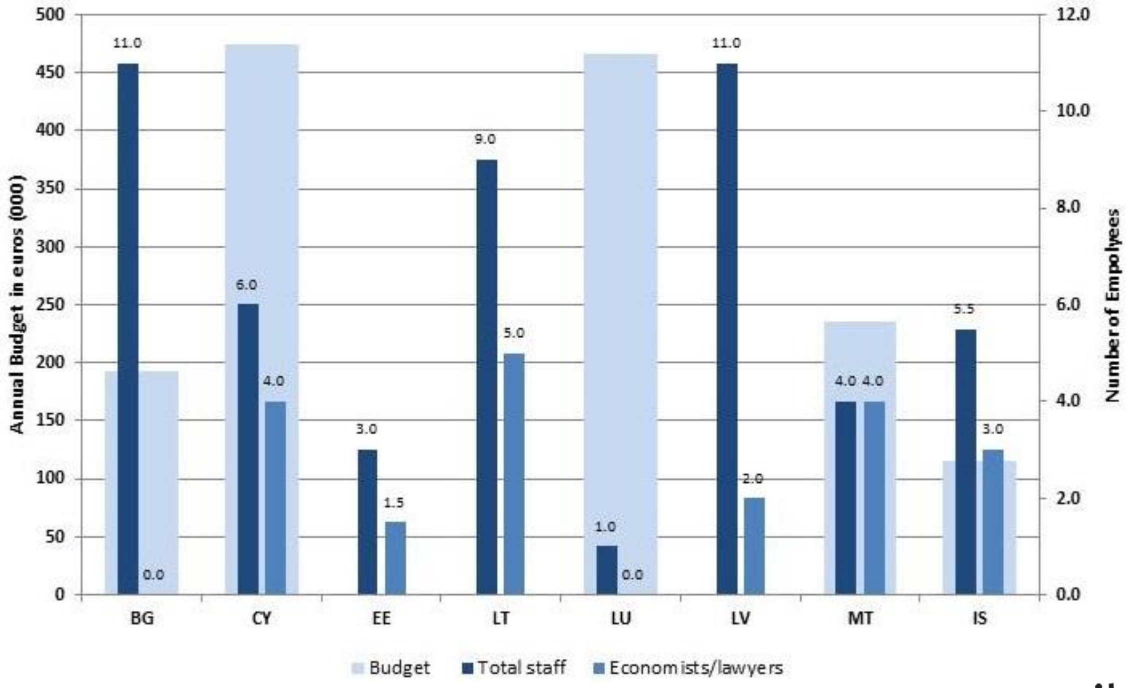
In the medium-sized market group there are 9 Member States (AT, BE, DK, FI, HU, PL, PT, SE, NO). They comprise about 19 per cent of the EU/EEA letter post. In this group, the average NRA budget is € 1.0 million and the average staff is 9.1 persons of which 5.4 are lawyers or economists. NRAs in 4 Member States (AT, BE, PT, SE) appear well staffed. The Danish NRA appears to lack sufficient resources, while the level of resources available to the remainder (FI, HU, PL, NO) also appears questionable.

Figure 2-3 NRA staff and resources, small markets




In the small market group there are 7 Member States (CZ, EL, HR, IE, RO, SI, SK). Collectively, they account for 3.9 per cent of the EU/EEA postal market. The average level of resources in this group is significantly greater than in the medium-sized market group. The average budget is € 700,000 and the average staff is 13.1 persons of which 7.7 are lawyers or economists. In this group, given the uncertainty of some figures, no Member State stands out as lacking in adequate resources, although there is so far no information on the resources of the Croatian NRA.

Figure 2-4 NRA staff and resources, very small markets




In the very small market group there are 8 Member States with (BG, CY, EE, LT, LU, LV, MT, IS).[25] Collectively, they account for about 0.7 per cent of the EU/EEA letter post market. Incomplete budget figures imply an average annual budget of about € 297,000. The average number of staff appears to be 6.3 persons of which 2.8 are lawyers or economists. With some exceptions (e.g., CY, LT), it appears that the resources available to NRAs in the very small group are substantially less than the resources available to NRAs in the small group, even though the legal and economic issues presented are similar. Hence, with the possible exceptions of Cyprus and Lithuania, it may be questioned whether the smallest Member States have devoted sufficient resources to fully implement the Postal Directive. At the same time, however, given the very size of their postal markets, these Member States are expending far more resources to regulate a given amount of postal activity than the larger Member States.

In sum, this survey suggests that up to 13 Member States (BG, DK, EE, FI, HU, IT, LU, LV, MT, NL, PL, IS, NO) may need to consider providing their NRAs additional resources to ensure full implementation of the Postal Directive. This conclusion must be treated with caution, however, because there are no standard definitions of terms such as ‘total staff’ and ‘professional staff’ and no standard rules for allocating budgets and personnel time in multi-sector NRAs (and ministries, where ministries exercise regulatory powers) to the postal sector.

25 Lichtenstein would be included in this group if information were available.

#### 2.1.4.4 Collection of compliance and statistical data

Article 22a of the Postal Directive requires Member States to ensure that the NRA has access to information from providers of postal services for two purposes:

- *Compliance*: 'to ensure conformity with the provisions of, or decisions made in accordance with this Directive' and

- *Statistics*: 'for clearly defined statistical purposes'. All providers of postal services providers, not only USPs, are obliged to 'provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the national regulatory authority'.

The NRA's duty of 'ensuring compliance with this Directive' (Article 22(2)) implies that the NRA is obliged to collect compliance data. The Directive gives more flexibility to Member States with regard to the collection of statistical data since there is no explicitly defined obligation to collect such information. In the present survey we asked NRAs whether they have been granted legal authority to obtain compliance and statistical information and whether or not they regularly collect such information.

Overall, EU/EEA Member States report substantially complete implementation of Article 22a.[26] With few exceptions, 20 Member States have the legal authority to collect compliance and statistical data for all types of postal services from all providers of postal services and report that they regularly collect such data without major problems. There are, however, gaps.

Some NRAs report that they do not have full authority to obtain information relating to compliance from their USPs:

- The Austrian NRA has no authority to collect compliance data from the USP and does not do so.

- Although the Dutch NRA has authority to collect compliance data for all services of the USP, it seeks to collect only data relating to universal service, which the USP has failed to answer in some cases.

- The Spanish NRA, and perhaps other NRAs,[27] is only authorised to collect from the USP compliance data relating to universal services.

---

**26** Source: WIK Survey.

**27** In a 2012 survey, the European Regulators Group for Postal Services (ERGP) reported that the NRAs of CZ, LU, and NO 'do not have the power to collect data from the USP outside the scope of the universal service.' The ERGP survey did not distinguish between data collected for purposes of compliance and statistics. European Regulators Group for Postal Services, *Report on Indicators on Postal Market,* ERGP (12) 32 (30 Nov 2012), p. 11.

More commonly, NRAs also report that they cannot or do not collect compliance data from non-USPs. Regular collection of compliance information from non-USPs is implied because the Postal Directive imposes certain obligations on non-USPs. Under the Directive, these obligations refer primarily relating to authorisations and complaint procedures, but the duties of non-USPs may be extended by individual Member States. Some Member States do not regularly collect compliance data from non-USPs but investigate specific complaints (BG, CZ, FI, IT, SE, UK, IS). It appears that at least three Member States (ES, NL, NO) do not collect compliance data from non-USPs at all. In some countries, non-USPs reportedly resist giving data to the NRA.

Collection of market statistics is more uneven since the Postal Directive allows Member States much more discretion is this respect. Six Member States (AT, BG, DK, IE, NL, NO) have not defined the market data required for statistical purposes.[28] In practice, it appears that all Member States except Austria collect statistics from their USPs but that at least 4 Member States (AT, ES, IE, NO) do not collect data from non-USPs. The Swedish NRA does not collect market statistics because a national statistics office does so. The Dutch NRA states only that it collects 'some statistical or quantitative information'.[29]

Overall, it appears that most NRAs are legally equipped to collect the data needed to ensure compliance with Postal Directive. Nonetheless, in at least 5 Member States (AT, CZ, ES, IE, NL, NO) it may be necessary to clarify or extend the legal authority of the NRA to collect data needed to ensure compliance with the Postal Directive and that 3 additional Member States (IT, LU, SE) may fall short of best practices. Since the Postal Directive allows Member States wide discretion in the collection of market statistics, market data for the EU as a whole is both incomplete and inconsistently defined from Member State to Member State.

#### 2.1.4.5 Enforcement authority and procedures

NRAs must also be vested with appropriate enforcement powers if they are to be responsible for ensuring compliance with the obligations arising from this Directive.[30] The level of enforcement authority varies among Member States. Twenty-four NRAs report the authority to 'prescribe a remedial rate or practice and order the USP(s) or other provider of postal services to put such rate or practice in effect', while 7 Member States (BG, CZ, ES, IE, NL, SE, NO) do not.[31] Almost all NRAs report that they can levy a fine if a postal operator fails to comply with an order (exceptions: DK, NO), but

---

**28** Source: WIK Survey. No answers from BG and IE.

**29** The ERGP reports that four NRAs (AT, CZ, CY, NO) do not have authority to collect from non-USPs relating to the universal service area and that 4 more NRAs (ES, LU, SE, and CH) cannot collect data relating to non-universal services. The ERGP does not distinguish between compliance and statistical data. See European Regulators Group for Postal Service, *Report on Indicators on Postal Market*, ERGP (12) 32 (30 Nov 2012), p. 12.

**30** Source: WIK Survey.

**31** Includes non-answers.

only a few NRAs can levy fines that exceed 1 per cent of the annual revenue of the USP (BE, FR, IT, NL, RO, UK). Nine NRAs (CY, IE, IT, LT, LV, MT, SE, UK, CH) state that they can apply for a court order if necessary to enforce an order.

In sum, 10 Member States (BE, CY, FR, IT, LT, LV, NL, MT, RO, UK) appear to have adequate enforcement authority because they can levy significant fines or they issue remedial orders and fines and seek court enforcement. On the other hand, the adequacy of the enforcement authority in several Member States (BG, CZ, DK, ES, IE, NO) appears questionable. Other Member States fall in between. On this scale, the Swiss NRA has substantial enforcement authority (including fines up to 10 per cent of revenue) while the Croatian NRA has moderate enforcement authority.

In evaluating best practices among NRAs, this study also reviewed the procedures of NRAs. Without attempting a comprehensive checklist of good administrative procedures, this survey asked NRAs to provide information on several indicators of good administrative practice and procedure:

- Are the postal laws and the major regulations in national language posted on an Internet site managed by the NRA?
- Has the NRA adopted procedures that ensure that specifically affected parties and members of the general public (where relevant) are given an opportunity to comment on proposed actions before the NRA takes them?
- Has the NRA adopted procedures that specifically ensure that all parties, including the USP(s), are treated in an equal and non-discriminatory manner in all proceedings and decisions except where a difference in treatment is justified by objective considerations?
- Has the NRA adopted procedures that specifically ensure an appropriate level of confidentiality for documents and information submitted by all parties in accordance with EU and national legislation?
- Has the NRA adopted procedures that specifically oblige the NRA to provide to affected parties a written justification for decisions that indicates clearly the relevant facts and the legal basis of the decision?
- Does the NRA post the grounds for decisions on the Internet in the national language?
- Does the NRA prepare a public report at least annually that summarises regulatory and commercial developments in the postal sector and summaries any plans for changes in postal regulation?

Overall the procedures of the NRAs appear to be satisfactory.[32] Fifteen NRAs answered all seven questions affirmatively, and another 12 reported five or six affirmative answers. The remaining NRAs (DK, EE, LV, IS) may wish to review their administrative procedures in order to introduce greater transparency and fairness.

Almost all Member States provide that a party may appeal a decision of the NRA to the courts. The exceptions are Malta and Iceland, which have established special boards for appeals from the NRA, and Norway, which provides for appeal to the postal minister (except in cases involving competitive issues, which are appealable to the minister for public administration). In total, approximately 140 decisions have been appealed since 2010; 14 have been reversed while 48 are still pending before the courts. From these figures, it appears that in most Member States appellate review is genuine and effective.[33]

#### 2.1.4.6 NRA caseload

One plausible measure of the level and focus of regulatory scrutiny appears to be the number and types of cases handled by the NRA. There is, however, no common definition among NRAs as to what constitutes a 'case'. To compensate for absence of a standard vocabulary, the survey questionnaire defined two broad types of regulatory proceedings as follows:

- a *formal administrative proceeding* which, in general, will involve giving affected parties a right to participate and respond to factual claims by opposing parties and a right to appeal an adverse decision to an independent body, and
- a *formal policy investigation* which, in general, may involve a fact gathering process — perhaps focussed on a report by NRA staff or by an independent consultant — and one or more requests for comments from affected parties and the general public.

Despite these definitions, NRAs apparently interpreted such terms quite differently.[34] The *average* number of formal cases (both judicial and policy) reported by NRAs for the years 2010 through 2012 varies widely, from 0 to 81. The largest and most sophisticated NRAs reported average caseloads in the 5 to 17 range, for example, FR (5), UK (6),[35] BE (9), and DE (17). Several NRAs (BG, CY, DK, HU, LT, LU, LV, RO) reported no cases at all in the survey period and 4 other NRAs (CZ, IE, PT, IS) did not answer. At the other extreme, several NRAs reported more than an average of 20 cases per year, including SI (22), SE (22), FI (35), AT (64), EL (81). Questions which sought to classify the judicial-type proceedings by subject matter (e.g. rate cases, cross

32 Source: WIK Survey.
33 Source: WIK Survey.
34 Source: WIK Survey.
35 UK figures represents cases of Ofcom in 2012 only.

subsidy, terminal dues) were not adequately understood to allow analysis.[36] The Swiss NRA reported an average of 44 cases per year while the Croatian NRA did not answer.

From this review, only tentative conclusions are possible. It seems fair to suggest that the 8 NRAs that reported no cases om over 3 years could do more ‘ensuring compliance with the obligations arising from this Directive’. Indeed, the 3 NRAs (PL, SK, MT) that reported an average of fewer than 1.5 cases per year are only marginally more active. These leaves 14 NRAs who appear to be putting significant efforts towards implementing the Directive. No judgement is possible for the 4 Member States (CZ, IE, PT, IS) that did not respond.

#### 2.1.4.7 Relations with NCA and NCPA

The Postal Directive obliges Member States to provide for coordination between the NRAs, National Competition Authorities (NCA)s and the National Consumer Protection Authorities (NCPA).[37] Moreover, Member States may entrust enforcement of the competition rules to the NRA, the NCA, or both.

In most Member States, enforcement of the competition rules is committed to the NCA alone.[38] Six Member States give the NRA equal (LV, UK) or exclusive (DE, EL, LU, PL) authority over application of the competition rules in the postal sector. [39] In 2 Member States (EE, NL), the same authority is both the regulator of specific sectors and the competition authority. These 8 Member States account for half of the total EU/EEA letter post market. In 12 Member States (BE, CY, DE, ES, FR, IE, LT, MT, RO, SI, IS, NO), the NRA and NCA are both (1) obliged to provide each other with the information necessary for the application of the Postal Directive and the competition rules in the postal sector and (2) regularly consult each other concerning application of the competition law to the postal sector. In 11 more Member States (BG, DK, EL, HU, IT, LV, PL, PT, SE, SK, UK), coordination consists of one or the other form of cooperation so that there are procedures in place for NRAs and NCAs to coordinate effectively.[40] In 4 Member States (AT, CZ, FI, LU), there appears to be no formal coordination between the NRA and NCA despite the requirements of the Directive.

Protection of users in the postal sector is the responsibility of the NRA in almost all Member States so coordination between the NRA and the NCPA would appear to be a

---

**36** Other anomalies: the Portuguese NRA reported only that some cases were undertaken; the Italian NRA responded by judicial-type cases were the province of the NCA.

**37** Postal Directive, Article 22(1): ‘Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest’.

**38** Source: WIK Survey.

**39** In the UK, Ofcom is both NRA and NCA in relation to the postal sector. Ofcom and the Office of Fair Trading keep each other informed of any ex post competition enforcement action in relation to postal services that they are proposing to undertake.

**40** In several cases reviewed for this study, we found that Belgian French, German, and Spanish NRAs and NCAs had in fact consulted and shared information or cooperated on regulatory issues.

minor issue.[41] There are 5 exceptions to this rule. In 2 Member States, the NCPA is responsible for protection of users of universal postal services, France and Romania. In 3 Member States (IT, PL, NO), the NRA and NCPA share the task. Among these 5 Member States, only France and Norway confirmed the practice of regular consultations between the NRA and NCPA.

## 2.2 Market opening and potential restraints on competition

### 2.2.1 Status of market opening and special rights

Article 7 of the Postal Directive forbids Member States to ‘grant or maintain in force exclusive or special rights for the establishment and provision of postal services’.

The traditional *exclusive right* in the postal sector is a ‘postal monopoly’ or ‘reserved area’ which defines a category of postal services that can only be provided by the public postal operator. Under the Second Postal Directive, after 1 January 2006, a Member State was allowed to maintain a reserved area for postal services that conveyed items of correspondence and direct mail if (1) each item weighed 50 grams or less and (2) the postage rate was not more than 2.5 times the public tariff for an item of correspondence in the first weight step of the fastest standard category. The Third Postal Directive required repeal of postal monopoly laws in all EU Member States by 31 December 2010, with the exception of 11 Member States (CY, CZ, EL, HU, LT, LU, LV, MT, PL, RO, SK) that were given an additional 2 years to comply.[42] As noted above, the effective date of the Third Postal Directive for 3 non-EU EEA Member States is still a matter of discussion within the EEA.

Thus, after a sixteen-year program of ‘gradual and controlled liberalisation of the market’[43] — and expansion of the EU to include 13 new Member States — the centuries old postal monopoly, or ‘reserved area’, has been ended throughout the European Union. Six Member States (DE, EE, FI NL, SE and UK) abolished their reserved areas prior to the implementation date required by the Postal Directive. All other Member States, including Croatia, explicitly abolished the reserved area by 1 May 2013, except for Cyprus and Romania, which have not yet transposed the Third Postal Directive.[44] Failure to transpose the Third Postal Directive into national law does not, however, necessarily maintain the reserved area. It appears likely that the Postal Directive’s obligation to repeal the reserved area may have ‘direct effect’ in these last

---

**41** Source: WIK Survey.
**42** The deadline for the 3 EEA Member States (LI, IS, NO) will determined by the EEA Joint Committee. See section 2.1, above.
**43** Directive 97/67, Recital 8.
**44** See section 2.1.1, above.

two Member States, making the reserved area unenforceable even if it is not explicitly repealed.[45]

The three non-EU EEA Member States (IS, LI, NO) and Switzerland still maintain a reserved area for the benefit of the USP.

The required abolition of '*special rights*' in the provision of postal services has received less attention. The term 'special rights' is undefined in the Postal Directive, but the prohibition against 'exclusive or special rights' in the Postal Directive is virtually identical to a similar prohibition in the competition directive for electronic communications.[46] Article 1 of that directive defines 'special rights' as follows:

> 'special rights' shall mean the rights that are granted by a Member State to a limited number of undertakings through any legislative, regulatory or administrative instrument which, within a given geographical area: . . .
>
> (b) confers on undertakings, otherwise than according to [objective, proportional and non-discriminatory] criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same electronic communications service or to undertake the same electronic communications activity in the same geographical area under substantially equivalent conditions

Some measures which may potentially be considered to grant or maintain rights for USPs in contravention of Article 7(1) are discussed below.

Case study 2-2 InPost, successful market entrant in the Polish letter post and parcel market

InPost delivers letters and parcels to about 75% of households in Poland. Until full market opening in 2013, InPost could deliver only letters heavier than 50 g. That is why customers of InPost had been forced to insert small metal tiles into letters below 50g which had been part of the reserved area for Polish Post until end of 2012. Including the metal tile, the letters' weight exceeded 50 grams. This practice of customers and their subcontractors was challenged by Polish Post, but finally approved by Polish courts.

45 Alessandra Fratini and Mariacristina Bottino, 'Failure to Implement the Postal Directive in the EU and EEA: Public and Private Enforcement of State Liability' (2012), pp. 51-53.

46 Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, OJ L249, 17 Sep 2002, p. 21, Article 2(1) ('Member States shall not grant or maintain in force exclusive or special rights for the establishment and/or the provision of electronic communications networks, or for the provision of publicly available electronic communications services').

InPost delivered 194 million items of correspondence, and nearly 2 million parcels in 2012. In 2013, InPost forecasts that volumes will increase up to 230 million letters and up to 5 million parcels. Letter and parcel services are offered to both business senders (for parcels mainly e-retailers) and individual customers who can access InPost's services via its 1,000 customer service points. B2C parcels are delivered to automated parcel stations ('Paczkomaty InPost') where receivers can collect their parcels. There are currently 650 automated parcel stations in medium-sized and large cities.

According to information received from InPost, even after full market opening the new postal law (entered into force on 1 January 2013) imposes obstacles to a level playing field for all postal service providers. According to InPost, the USP does not grant access to elements of the postal infrastructure. In addition, different rules for VAT apply to the USP and other postal operators. Polish VAT regulation frees certain services of the designated universal service provider from VAT. Services exempt from VAT are not only universal postal services but also services which are closely related to those services. This is interpreted factually as letter post services for senders with less than 100,000 items per year. These (in fact quite large) senders therefore benefit from a tax exemption intended for universal postal services. InPost also pointed out that in 2012, shortly before full market opening, many public senders accomplished public procurements for postal services with exceptionally long contract durations of up to eight years, and whose procurement terms were designed so that only Polish Post could fulfill them.

### 2.2.2 Authorisation procedures and conditions

Article 9 of the Postal Directive declares that for services that are 'within the scope of the universal service', Member States may introduce 'authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to safeguard the universal service'. The Directive provides for two types of authorisations: a general authorisation and an individual licence. The essential difference is that an individual licence requires the operator to obtain specific approval from regulatory authorities before starting operations whereas a general authorisation does not. An *individual license* may also include rights and conditions specific to the licensee ('which gives an undertaking specific rights, or which subjects that undertaking's operations to specific obligations') whereas a *general authorisation* may not.[47]

#### 2.2.2.1 Type and scope of authorisations

By definition, any requirement to obtain an authorisation to enter a market constitutes at least some restraint on competition since no sector specific authorisation is required to engage in business generally. The degree of restraint may range from insignificant to substantial. An authorisation procedure that merely requires a provider of postal services to register with the NRA and imposes no limits on operations may have no tangible effect on competition while promoting market transparency and user protections. On the other hand, an authorisation that requires a provider of postal services to endure a lengthy official investigation before commencing business and

47 See Postal Directive, Article 2(14).

includes burdensome operational conditions could affect competition materially since it may discourage or prevent operators from entering the market. At a minimum, new entrants will have to earn extra profits to compensate for the cost necessary to obtain an authorisation. Even though such authorisation procedures apply equally to all operators, competition is restrained since incumbent operators are protected by making new entry more difficult.

To promote the Directive’s overall objective of market opening, Article 9 includes several qualifications to the authorisation process. Authorisations may be introduced within the universal service area only ‘to the extent necessary in order to guarantee compliance with the essential requirements and to ensure the provision of the universal service’ (Article 9(2)). Moreover, the procedures, obligations and requirements associated with authorisations must be ‘transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria’ (Article 9(3)).

The 2009 *Role of Regulators* reviewed implementation of Article 9 criteria in detail. In that study, NRAs were asked to explain why authorisation procedures were needed to guarantee compliance with the ‘essential requirements’ (non-economic public interest requirements) or to ensure provision of universal service (presumably already adequately ensured by other means). NRAs were also asked why, if authorisation procedures were objectively justified, the less burdensome general authorisation would not suffice and whether authorisation procedures were applied equally and objectively to all providers of postal services including the USP(s)? The *Role of Regulators* concluded that many of the reasons given for introducing authorisation procedures did ‘not seem very clear or convincing’ and recommended as a best practice —

> For services within the universal service area, authorisations should be introduced only if, and only to the extent, necessary to guarantee compliance with essential requirements, ensure provision of universal service, or implement other provisions of the Postal Directive. Where necessary, authorisations should be in the form of general authorisations applicable to all postal operators.

The *Role of Regulators* also expressed particular concern that authorisation procedures in the Postal Directive were being used to expand regulatory controls rather than liberalise postal markets. The study noted that Member States had ‘introduced individual licences for all services within the universal service area, thus creating new regulatory obstacles to the provision of services that were previously outside the reserved area and provided without regulatory control’.[48]

**48** WIK-Consult, *The Role of Regulators* (2009), pp. 113, 289, 290.

Table 2-8 Authorisation procedures within the universal service area

| | Licence or GA req'd in US | US servs. subject to licence | Authority granting licence | Period of licence (years) | Reasoned decisions if withdrawn |
|---|---|---|---|---|---|
| AT | Lic | LP-50 | NRA | None | Yes |
| BE | Lic | Cor | NRA | >7 yr | Yes |
| BG | Lic | USO | NRA | >7 yr | Yes |
| CY | Lic | USO | NRA | --- | Yes |
| CZ | None | --- | --- | --- | --- |
| DE | Lic | C/DM-1000 | NRA | None | Yes |
| DK | GA | --- | --- | --- | --- |
| EE | Lic | USO | NRA | 3 to 7 | Yes |
| EL | Lic | USO | NRA | None | Yes |
| ES | Lic | USO | Min Post | None | Yes |
| FI | Lic | Cor | Council | >7 yr | Yes |
| FR | Lic | Cor | NRA | >7 yr | Yes |
| HR | --- | USO | NRA | 3 to 7 | NA |
| HU | Lic | USO | NRA | None | Yes |
| IE | GA | --- | --- | --- | --- |
| IT | Lic | USO | Min Post | 3 to 7 | No |
| LT | GA | --- | --- | --- | --- |
| LU | Lic | USO | NRA | >7 yr | Yes |
| LV | GA | USO | NRA | None | NA |
| MT | Lic | USO | NRA | None | Yes |
| NL | None | --- | --- | --- | --- |
| PL | GA | NA | NA | NA | NA |
| PT | Lic | USO | NRA | >7 yr | Yes |
| RO | GA | Other | NA | NA | NA |
| SE | Lic | LP | NRA | None | Yes |
| SI | GA | --- | --- | --- | Yes |
| SK | GA | --- | --- | --- | --- |
| UK | GA | C/DM-350 | NRA | --- | --- |
| IS | Lic | Cor | NRA | >7 yr | Yes |
| NO | Lic | LP-50 | Min Post | 3 to 7 | Yes |
| CH | GA | NA | NA | NA | NA |

Source: WIK Survey

Table 2-8 summarises the current state of authorisations for postal operators providing services within the universal service area. Although in the present study we have not analysed the type and scope of authorisations in the same depth as in *Role of Regulators*, it is evident that concerns about burdensome authorisation procedures are even more appropriate after full market opening. As this table shows, 10 EU/EEA Member States (BG, CY, EE, EL, ES, HU, IT, LU, MT, PT)[49] continue to maintain

49 WIK-Consult, *The Role of Regulators* (2009), p. 109, found that 12 Member States (BE, BG, CY, EE, EL, ES, HU, IT, LV, MT, PL, PT) required an individual license for all services within the universal service area. Copenhagen Economics, *Main Developments (2008–2010)* (2010), p. 71, found that only 6 Member States did so (BE BG, CY, EL, MT, SI).

licence requirements (i.e., grant of an authorisation before beginning service) for the entire USO area, while 8 additional Member States (AT, DE, BE, FI, FR, IS, SE, NO) require licenses for portions of the universal service area. While licences generally tend to be more difficult to obtain than general authorisations, in some (but not all) of the countries that require licences for postal services, the licences appear fairly easy to obtain, and they have in fact been obtained by several operators. Even so, licensing regimes appear unnecessary when 9 Member States (DK, IE, LT, LV, PL, RO, SI, SK, UK), and Switzerland, manage with only a general authorisation regime and 2 Member States (CZ, NL) require no authorisation at all.[50]

#### 2.2.2.2 Conditions attached to authorisations

The *conditions* attached to authorisations also raise concerns either because they may inhibit competition or because they exceed specific limits set by the Postal Directive. In brief, authorisations may be subject to two categories of conditions: (i) conditions necessary in order to guarantee compliance with the 'essential requirements'[51] and (ii) conditions necessary to ensure provision of the universal service. Within this framework, the Directive specifies types of conditions that may and may be introduced and certain limits on those authorisations. See Table 2-9.

Table 2-9 Permitted conditions for authorisations within universal service

| |
|---|
| **A. Conditions to ensure essential requirements** |
| 1. Confidentiality of correspondence; |
| 2. Security of the network as regards the transport of dangerous goods; |
| 3. Data protection; |
| 4. Environmental protection; |
| 5. Regional planning. |
| 6. Respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law. |
| **B. Conditions to ensure the provision of universal service** |
| 1. Universal service obligations; |
| 2., If necessary and justified;, requirements concerning the quality, availability, and performance of the relevant services. |
| 3. An obligation to make a financial contribution to a compensation fund to support universal service, where appropriate; |
| 4. An obligation to make a financial contribution to the NRA's operational costs, where appropriate; |
| 5. An obligation to respect working conditions laid down by national legislation; |

50 No information from Lichtenstein or Croatia.

51 'Essential requirements' is defined in Article 2(19) of the Postal Directive as follows: 'general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law and, where justified, data protection, environmental protection and regional planning. Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy'.

| |
|---|
| **A. Conditions to ensure essential requirements** |
| 1. Confidentiality of correspondence; |
| 2. Security of the network as regards the transport of dangerous goods; |
| 3. Data protection; |
| 4. Environmental protection; |
| 5. Regional planning. |
| 6. Respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law. |
| **C. Limitations on conditions** |
| 1. Obligations and requirements referred to A.1 and in Article 3 of the Directive (defining universal service) may only be imposed on designated universal service providers. |
| 2. Authorisations may not, with respect to the same elements of the universal service or parts of the national territory, require both universal service obligations and financial contributions to a compensation fund; |
| 3. Authorisations may not lead to an overlap in relation to imposed universal service obligations; |
| 3. Authorisations may not duplicate conditions which are applicable to undertakings by virtue of other, non-sector specific national legislation; |
| 4. Authorisations may not impose technical or operational conditions other than those necessary to fulfil the obligations of this Directive. |

In the present survey, several types of conditions on authorisations reported by NRAs appear inappropriate, or at least questionable.[52] Eleven Member States (AT, BE, BG, FI, HU, IT, PL, PT, RO, SE, IS) and Switzerland appear to apply conditions relating to the ‘quality, availability, and performance’ of services provided by authorised postal operators other than designated USPs. Such conditions are permitted by the Postal Directive, but only if they are not comparable to ‘universal service obligations’.

The Postal Directive does not define clearly the line between permissible conditions relating to ‘quality, availability, and performance’ and impermissible conditions specifying ‘universal service obligations’. In an interview conducted for this survey, a USP representative suggested that any condition relating to ‘universal service obligations’ which does not duplicate a specific universal service obligation condition is permissible. For example, if the universal service obligation requires the USP to provide service six days per week in 100 per cent of the national territory, then a quality, availability, and performance condition could require a licensee to provide service five days per week in 95 per cent of the national territory. In our view, however, such an interpretation of ‘quality, availability, and performance’ is unsustainable in light of the overall purpose of the Postal Directive. The Third Postal Directive required Member States to abolish ‘exclusive or special rights’ in the postal sector and provide for ‘full market opening’. If one interprets ‘quality, availability, and performance’ as broadly as suggested, Member States could prevent competition in the entire universal service area, thus creating a new ‘reserved area’ larger than any permitted before the Third Postal Directive.

52 Source: WIK Survey.

In our view, then, an authorisation condition relating to 'quality, availability, and performance' whose primary object or effect is to ensure provision of universal service must be deemed a 'universal service obligation' and can only be imposed on a postal operator designated as a USP under Article 4. A condition relating to quality, availability, and performance that applies to a non-designated postal operator is acceptable under the Postal Directive only if it is strictly 'necessary and justified' to accomplish some other objective of the Postal Directive, such as protecting users. For example, minimum performance, transparency about quality of services, or maintenance of a registered business location could be seen as justified to prevent fraud by postal operators — if there had been incidents of fraud by postal operators in a Member State (but we are not aware of any such cases). [53]

From this perspective, it appears that use of quality, availability and performance conditions in three other Member States deserves comment.

In Belgium, the licencing regime requires a provider of postal services, inter alia, (1) to ensure distribution twice a week after two years of operation; (2) to service all three regions of Belgium after 5 years following the commencement of operations according to the following progression: first year: 10 %, 2nd year 20 %, 3rd year 40 %, 4th year: 60 % and 5 years: 80 %; and (3) to apply uniform rate throughout the territory regardless of the location of collection and delivery.[54] Such conditions are clearly intended to protect the USP; they are not logically related to the quality, availability, and performance of the specific services offered by the licensee.

In Finland, the Postal Act of 2011 repealed two prior measures that authorised onerous authorisation conditions.[55] The 1997 Act on the Fee Collected for Securing the Provision of Postal Services in Sparsely Populated Areas (708/1997) authorised the imposition of license fees on postal operators based on the population density of the area served. Fees could rise to 20 per cent to total revenues. The postal act of 2001 provided that licence conditions could include universal service obligations — e.g., 'provisions on the operating area of the postal undertaking, types of items of correspondence, clearance, pricing as well as other provisions necessary to ensure the quality, availability and efficiency of the services' — and even impose obligations associated with an area not covered by the licence application.[56] Under the 2011 act, the government must grant a licence if the licensee meets minimal qualifications and 'the area for which the licence is sought must be uniform in administrative and operational terms'. However, the government must impose licence conditions which cover 'other comparable terms that are essential for ensuring the quality, availability or

**53** Other interpretations of 'quality, availability, and performance' may be plausible as well, but at a minimum, this phrase must be interpreted in a manner consistent with the objectives of the Directive.
**54** Untitled and undated license requirements posted on the Internet site of the Belgian NRA, BIPT. See http://ibpt.be/ShowContent.aspx?levelID=34&objectID=1598&lang=en&forLang=fr [4 Jun 2013].
**55** Postal Act 2011, 415/2011, sec. 83.
**56** Postal Act 2001, 313/2001, sec. 6.

efficiency of services'.[57] Precisely what this provision means is unclear because no licence has been granted under the new act.[58] In answers to the present survey, the NRA indicated that licence conditions could include frequency of delivery and access points. If so, authorisation conditions in Finland may still be used to inhibit market entry.

In the UK, the new NRA, Ofcom, has recently indicated an apparent willingness to adopt authorisation conditions designed to protect the USP from competition. Ofcom's statement was included in a document providing guidance on possible regulation of end-to-end competitors of Royal Mail. Although Ofcom rejected use of licence conditions in current circumstances, Ofcom discussed the lawfulness of using 'General Universal Service Conditions' or 'GUSCs' to restraint competition which might undermine Royal Mail's ability to sustain the universal service as follows:

> As regards the lawfulness of GUSCs, they are provided for by section 42 of the Postal Services Act 2011 and may be imposed in accordance with the conditions of the Act. In particular, GUSCs can only be imposed in the circumstances envisaged in section 42 and where their imposition is objectively justified, proportionate and non-discriminatory. *The provisions of the Directive are not limited to a universal service compensation fund but expressly include a power, for services falling within the scope of the universal service, to introduce authorisation procedures to the extent necessary in order to ensure the provision of the universal service*. These requirements may include 'if necessary and justified ... requirements concerning the quality, availability and performance of the relevant services'.[59]

By this statement Ofcom appears to conclude that UK legislation permits use of 'quality, availability and performance' conditions to protect the USP from competition. As noted above, this position appears to us to give too broad an interpretation to this provision from the Directive.

In addition potential misuse of 'quality, availability and performance' conditions, 3 Member States (DK, HU, SK) require financial guarantees or minimal capital requirements, and 10 Member States (BE, DE, EE, FR, HR, HU, LU, PL, PT, SK) require a showing of technical competence. While perhaps understandable as an extra measure of protection for users, requiring such assurances risks inhibiting the innovations that may stimulate competition. Such conditions also appear to exceed what is permitted by the Directive, because they '*impose technical or operational conditions other than those necessary to fulfil the obligations of this Directive.*'

**57** Postal Act 2011, 415/2011, secs. 6, 7, 9(2).
**58** Finland, Ministry of Transport and Communications, 'Postal operations and licences', http://www.lvm.fi/ web/en/postal_services (accessed, 4 Jun 2013).
**59** United Kingdom, Ofcom, 'End-to-end competition in the postal sector: Ofcom's assessment of the responses to the draft guidance on end-to-end competition' (27 Mar 2013), sec. 5.9 (emphasis added).

Authorisation procedures should not be used to keep from the market an entrepreneur merely because he or she has little money and an unorthodox (but possibly innovative) business plan.

With respect to authorisation conditions related to 'essential requirements' the basic requirement of the Postal Directive is that conditions relating to essential requirements should not introduce duplicative regulation, i.e., such conditions should 'not duplicate conditions which are applicable to undertakings by virtue of other, non-sector specific national legislation'. However, 11 Member States (EL, IT, LU, LV, PT, SI, DE, ES, FR, HU, RO) appear to include 3 or more authorisation conditions that duplicate the obligations of non-postal legislation.[60] The risk in including such duplicative provisions in a postal authorisation is that this practice allows an NRA to deprive a postal operator of his or her business while the underlying non-postal statute may provide a penalty more proportional to the infraction.

#### 2.2.2.3 Number of authorisations

Another perspective on the open or closed nature of the authorisation process may be gained from the number of authorisations granted and actively used. Table 2-10 summarises the data provided by NRAs.[61]

---

**60** Source: WIK Survey. Fourteen Member States (BE, BG, CY, DE, EL, ES, FR, LT, LV, MT, PT, RO, SE, IS) reported including a condition requiring confidentiality of correspondence that duplicated a requirement in a non-postal law.

**61** Some replies by been edited by WIK in light of additional research.

Table 2-10 Designated and authorised postal operators in 2010-2012

| | Type of authorisa-tion | Non-USPs must provide data | NRA collects non-USP data regularly | Num of authorisa-tions 2010 | Num of authorisa-tions 2011 | Num of authorisa-tions 2012 | Num of active ops 2010 | Num of active ops 2011 | Num of active ops 2012 |
|---|---|---|---|---|---|---|---|---|---|
| AT | Lic | No | No | 0 | 4 | 5 | 0 | 1 | 3 |
| BE | Lic | Yes | Yes | 0 | 0 | 0 | 0 | 0 | 0 |
| BG | Lic | Yes | Yes | 4 | 5 | 5 | 0 | 0 | --- |
| CY | Lic | Yes | Yes | 1 | 1 | 1 | 1 | 1 | 1 |
| CZ | None | Yes | Yes | | | | | | |
| DE | Lic | Yes | Yes | 1509 | 1366 | 1328 | 600 | 600 | --- |
| DK | GA | Yes | Yes | 0 | 4 | 7 | 0 | 1 | 1 |
| EE | Lic | Yes | Yes | 1 | 1 | 1 | 1 | 1 | 1 |
| EL | Lic | Yes | Yes | --- | --- | 6 | 0 | 0 | 0 |
| ES | Lic | Yes | Yes | --- | 370 | 363 | --- | --- | --- |
| FI | Lic | Yes | Yes | 0 | 0 | 1 | 0 | 0 | 0 |
| FR | Lic | Yes | Yes | 24 | 28 | 31 | 0 | 0 | 0 |
| HR | --- | Yes | Yes | | | | | | |
| HU | Lic | Yes | Yes | 0 | 0 | 0 | 0 | 0 | 0 |
| IE | GA | Yes | --- | --- | --- | 2 | --- | --- | --- |
| IT | Lic | Yes | Yes | 215 | 323 | 439 | --- | --- | --- |
| LT | GA | Yes | Yes | 11 | 12 | 16 | 0 | 0 | 0 |
| LU | Lic | Yes | Yes | 0 | 0 | 0 | 0 | 0 | 0 |
| LV | GA | Yes | Yes | --- | --- | --- | --- | --- | --- |
| MT | Lic | Yes | Yes | 2 | 2 | 2 | 1 | 1 | 1 |
| NL | None | Other | Other | | | | | | |
| PL | GA | Yes | Yes | 0 | 0 | --- | 3 | 3 | --- |
| PT | Lic | Yes | Yes | 12 | 12 | 13 | --- | --- | --- |
| RO | GA | Yes | Yes | 434 | 322 | 347 | --- | --- | --- |
| SE | Lic | Other | NA | 30 | 30 | 30 | 1 | 1 | 1 |
| SI | GA | US | Yes | 1 | 6 | 6 | 0 | 2 | 4 |
| SK | GA | Yes | Yes | --- | --- | --- | --- | --- | --- |
| UK | GA | Yes | Yes | --- | --- | 63 | --- | --- | 5 |
| IS | Lic | Yes | No | 1 | 1 | 1 | 1 | 1 | 1 |
| NO | Lic | No | No | --- | --- | --- | --- | --- | --- |
| CH | GA | Yes | Yes | 23 | 22 | 52 | 0 | 0 | 2 |

Source: WIK Survey

This table indicates that a substantial number of authorisations have been granted in about half of the Member States. Fourteen EU/EEA Member States (AT, BG, DE, DK, EL, ES, FR, IT, LT, PT, RO, SE, SI, UK) of the 28 Member States requiring authorisations report granting 5 or more authorisations.[62] On the other hand, very few Member States report that a significant number of authorised postal operators are actually active in the market. Looking at both 2011 and 2012 data, it appears that there are only 5 Member States in which there are 2 or more authorised and active postal

62 Switzerland reports 52 authorisations in 2012 of which 2 were active. Croatia did not reply

operators (number of operators in parentheses): AT (3), DE (600), PL (3), SI (4), UK (5).[63]

The first two columns of this table indicate whether the NRA has a legal right to request statistical data from the non-USPs (as required under Article 22a of the Postal Directive) and whether the NRA in fact collects such information regularly. According to this table, however, of the 27 Member States that require authorisations for postal operators, 12 Member States (BG, DE, ES, IE, IT, LI, LV, PL, PT, RO, SK, NO) did not reply when asked for the number of *active* operators in 2012. Given that some NRAs apparently cannot tell the number of active operators, it is surprising that all but one NRA report that they regularly collect statistics from non-USPs (the exception was Norway, with the Irish NRA not answering). The corresponding figure for 2011 was 9 Member States.[64] From this lack of response, it appears that at least a third of NRAs may not know exactly which operators are active in the market. Thus, they may not be monitoring their authorisation regimes sufficiently to evaluate the development of competition.

### 2.2.3 Access to postal infrastructure

Article 11a, added by the Third Postal Directive, requires Member States to give all postal operators access to 'elements of postal infrastructure' — facilities and information resources used in providing postal services — '[w]henever necessary to protect the interest of users and/or to promote effective competition'. Article 11a states:

> Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions and national legislation, Member States shall ensure that transparent, nondiscriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, such as postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service and return to sender service. This provision shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.

Six elements of postal infrastructure are specified explicitly but not exclusively: postcodes, address database, post office boxes, delivery boxes, change of address database, and redirection and return services. In this study, we asked both NRAs and

**63** In addition, 6 Member States (CY, DK, EE, MT, SE, IS) report only one authorised and active postal operator, but it is not always clear whether or not this refers to the USP itself, thus implying an absence of competition.

**64** This number excludes the UK. In the case of the UK, it is clear that the lack of response is due to the appointment of a new NRA and not to an absence of information.

USPs whether non-discriminatory access conditions were in fact provided to these six elements of the postal infrastructure.

These questions elicited the most heavily qualified answers of any in the questionnaire and the highest level of disagreement between NRAs and USPs. Of the 180 questions (30 EU/EEA countries, excepting LI, times 6 elements of the postal infrastructure), NRAs reported non-discriminatory access in 81 cases, whereas USPs reported access in 98 cases, Half of the answers by the NRAs (42 cases) were directly contracted by the USP (i.e., 'no' instead of 'yes' or 'yes' instead of 'no').

The results are shown in Table 2-11. This table reports the status of access to the postal infrastructure as reported by the NRAs. An asterisk (*) indicates a negative answer to the same question by the USP. The first six rows are the categories of access listed in Article 11a. Some additional noteworthy points which could not be presented in the table include the following:

- Ireland is the only Member State which does not have a post code system.
- In Sweden, the address database exists independently of postal operators and a change of address database is operated by the Swedish State; all postal operators have access to both.
- Four Member States (CZ, NL, SE, SI) regard delivery boxes to be in private ownership, so the Member State cannot grant access.

Table 2-11 Access to postal infrastructure ensured by Member States

| Type of access | Member States | No answer | Number | % survey market |
|---|---|---|---|---|
| Access to post codes | AT, BE*, BG, CY, CZ, DE*, DK, EE, FI, FR, HU, LT, LU, MT, PL, SE, SI, UK | IS | 19 | 78% |
| Access to post office boxes | CY, CZ, DE, DK, EE, FR, IT, LT, LU, LV, MT, NL, PL, SE, SI | AT, IE, IS, HR | 15 | 59% |
| Access to delivery boxes | AT, BE*, BG, CY, DE*, DK, ES, FR, HU, IE, IT, LT, LU, PL, PT, SK, IS* | HR | 17 | 65% |
| Access to address database | CY, CZ, DE, DK, EL*, FR, LT, LU*, SI, UK | AT, IE, HR | 10 | 64% |
| Access to change of address database | AT*, CY, CZ, DE, DK, EL*, FR, LT*, LU*, SI | IE, HR | 10 | 47% |
| Access to USP redirection and return services | CZ, DE, DK, EE, EL*, FR, LT, LU, MT, SI | IE, LI, HR | 10 | 43% |
| Equal downstream access | CZ, DE, EE, ES, HU, IT, LU, PL*, PT, SI, UK | | 11 | 58% |
| Required downstream access | AT*, CZ, DE, EE, IT, LT, LU, MT, PL*, PT, SI, UK | | 12 | 55% |

Source: WIK Survey

Note: Asterisk (*) indicates contrary answer by USP.

The last two rows in this table indicate whether the NRA has authority to compel two other types of access to the postal infrastructure. 'Equal downstream access' refers to authority to require the USP to provide equal access to all parties if the USP has granted downstream access to one party (as Member States are obliged to ensure under Article 11a). 'Required downstream access' refers to authority to require the USP to grant access even though the USP has not provided similar access to any other party. Mandatory access might be considered appropriate where, for example, a USP has a market dominant position in a particular geographic area. It should be noted, however, that in many Member States, the USP grants downstream access to its network, even non-discriminatory access, without legal obligation.[65]

While the high degree of qualification and inconsistency make it difficult to draw firm conclusions, it appears (relying upon the answers of the NRAs) that 7 Member States (CZ, DE, DK, FR, LT, LU, SI) have made significant progress towards ensuring a non-discriminatory access to the postal infrastructure (granting access in 6 or more categories). In 13 Member States (BE, BG, ES, FI, HR, IE, LV, NL, RO, SE, SK, IS, NO), and Switzerland, the NRA's capacity to implement Article 11a may be questioned since they assure access in 2 or fewer of the categories listed. The other 10 Member States fall in between these poles.

Case study 2-3 Ofcom's consultation on the Postcode Address File (United Kingdom)

The Postcode Address File (PAF) contains addresses for each postal codes in the UK, totalling more than 28 million addresses.[66] It is owned and updated by Royal Mail who provides access to the PAF to other postal operators and businesses for a licence fee. The PAF data are used by businesses from a wide range of branches for services such as insurances, database management, identification, marketing, or mapping. The goal of Ofcom's current consultation is to ensure that PAF data are made easily accessible to users on reasonable terms and with light-touch licensing terms as well as to incentivise a wider use of PAF data and ensure it is efficiently maintained.

**65** European Regulators Group for Postal Services, *Report on 'access' to the postal network and elements of postal infrastructure*, ERGP (12) 36 (2012), p. 33.
**66** United Kingdom, Ofcom, 'Postcode Address File Review, Consultation of 7 February 2013' (2013).

Case study 2-4 Access to letterboxes in apartment blocks and curbside delivery boxes under current postal legislation (Austria)

The long-lasting controversy on letter and curbside delivery boxes in Austria has been brought to an end with a decision of the constitutional court in 2012. Traditionally, letter and curbside delivery boxes in Austria could only be accessed by Austrian Post. With postal market liberalisation, it became clear that letter boxes would need to be equipped in such a way that all postal service providers are able to deliver letters to receivers. Back in 2006, buildings owners had been obliged by law to install new boxes which allow access by competitors of Austrian Post. However, building owners successfully filed a lawsuit against this. The highest Austrian court took the view that an obligation of building owners would only be acceptable if it was in general public interest to exchange the boxes – which the court denied, the benefit of exchanging being only with postal service providers.

The situation remained unclear until the end of 2009. The 2009 postal law obliges the USP (Austrian Post) to exchange curbside delivery and letter boxes in apartment blocks with more than four delivery points on more than two levels. The exchange of letter boxes was stopped though after Austrian Post on their part filed a complaint against this legal provision. After a decision of the highest court in March 2012 against Austrian Post, the exchange of letter boxes is now proceeding rapidly. Costs of exchanging old boxes have to be borne by the USP but can be divided among all postal service providers upon request of the USP (§ 34 (9) postal law). In this case, all postal service providers with an annual turnover of more than 1 million € have to contribute to the cost of exchanging letter boxes according to their market share and the number of postal service providers in one region.

Case study 2-5 Access to the postal address database: Practice in Slovenia

Slovenian postal law obliges the designated universal service provider to grant access to elements of its postal infrastructure: postcode system, address database (needed by competitors for sorting of postal items falling under downstream access), post office boxes, delivery boxes, change of address information, redirection and return to sender services.[67] In the past, information on postcodes and address databases were delivered by physical mail to the access seeking party. Until end of 2012, the service was available in paper format only, complicating (automated) sorting of downstream access items. Since 2013, the databases are submitted electronically

67 § 32 (1) of Slovenian Postal law published in Official Journal of RS, no. 51/2009 of 03.07.2009.

### 2.2.4 Access to downstream services of the USP

Article 12, indent 5, of Postal Directive establishes regulatory criteria for access to ‘special tariffs’ provided within the scope of the universal service. Special tariffs are discounted rates which usually require at least some mail preparation (e.g. pre-sorting) and handing over at a sorting centre or a specific bulk mail access point. Where USPs grant access to downstream services within the universal service (whether regulated or voluntarily), conditions of access should be transparent and non-discriminatory for businesses, bulk mailers, and consolidators. Article 12, fifth indent, provides in full:

> whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.

If a USP has a market dominant position in downstream delivery operations, the USP may restrain or distort competition in the upstream market if it unreasonably discriminates for or against certain mailers, consolidators, or other public or private operators.

#### 2.2.4.1 Access in law and practice

Based on the requirements of Article 12, indent 5, the present survey asked NRAs whether special tariffs for bulk letter mail were:

- required by law to be transparent and/or verified by the NRA to be transparent in practice;
- required by law to be non-discriminatory with respect to mail consolidators and/or verified by the NRA to be non-discriminatory with respect to mail consolidators in practice; and
- required by law to be non-discriminatory with respect to private operators and/or verified by the NRA to be non-discriminatory with respect to private operators non-discriminatory with respect to mail consolidators in practice.

Where bulk letter service is considered part of the universal service, the NRA should be able to answer that all three obligations are required by law and verified in practice. Our survey suggests that this is rarely the case. On the other hand, several Member States

regulate transparency and discrimination in special tariffs even when such services are outside the universal service. Then, too, NRAs in 9 Member States (DK, EE, ES, FI, HR, HU, LU, SK, NO), as well as in Switzerland, seem poorly informed about special tariffs. See Table below.

Table 2-12 Special tariffs controlled by NRAs

| | All special tariffs, whether or not within USO | Only special tariffs for services within the USO | Other | None | No answer |
|---|---|---|---|---|---|
| Which special tariffs are subject to regulatory control of the NRA? | CY, DE, EE, LT | AT, BE, BG, EL, ES, FR, HU, IT, LU, MT, PL, PT, RO, SE, SK, IS, NO | NL, SI | DK, FI, CH | IE, UK, HR |
| NRA has all information on these special tariffs? | CY, DE, LT | AT, BE, BG, EL, FR, IT, MT, PL, PT, RO, SE, IS | NL, SI | | IE, UK |

Source: WIK Survey

Table 2-13 Access to special tariffs

| | bulk letter mail | direct mail | bulk parcels |
|---|---|---|---|
| USP offers special tariff? | AT, BE, BG, CY, DE, DK, EE, EL, FI, FR, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SE, SI, SK, UK, IS, NO, CH<br><br>NA: ES, LI, HR | AT, BE, CY, DE, DK, EL, FR, HU, LU, NL, PL, RO, SE, SK, UK, IS, NO<br><br>NA: BG, CZ, EE, ES, FI, IE, IT, LT, PT, SI, LI | AT, BE, BG, CY, DE, DK, EE, EL, HU, LU, NL, PL, PT, RO, SE, SK, UK<br><br>NA: CZ, ES, FI, FR, IE, IT, LT, LI, CH, HR |
| transparent and non-discriminatory* | AT, BE, BG, CY, DE, DK, EE, EL, FI, FR, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SE, SI, SK, UK, IS, NO | AT, BE, CY, DE, DK, EL, FR, HU, LU, NL, RO, SE, SK, UK, IS, NO | AT, BE, DE, DK, EE, EL, HU, LU, PL, PT, RO, SK<br><br>NA: BG, SE, UK |
| available to consolidators* | AT, BE, BG, DE, DK, EE, EL, FI, FR, HU, IE, IT, LT, LU, MT, PT, RO, SE, SI, SK, IS, NO<br><br>NA: UK | AT, BE, DE, DK, EL, FR, HU, LU, NL, RO, SE, SK, UK, IS, NO | AT, BE, BG, CY, DE, DK, EE, EL, HU, LU, NL, PL, PT, RO, SK<br><br>NA: BG, SE, UK |
| available to other postal operators* | AT, BE, BG, DE, DK, EE, EL, FI, FR, HU, IE, IT, LT, LU, MT, NL, PT, RO, SE, SI, SK, UK, IS, NO<br><br>NA: UK | AT, BE, DE, DK, EL, FR, HU, LU, NL, SE, SK, UK, IS, NO | AT, BE, BG, DE, DK, EE, EL, HU, LU, NL, PL, PT, SK, UK<br><br>NA: SE, UK |

* required by law and/or verified in practice

Source: WIK Survey

In the majority of the survey countries, transparent and non-discriminatory access is required by law and/or verified in practice. The exceptions are Poland (for bulk letters) and Switzerland (for direct mail and bulk parcels) where transparency and non-

discrimination for special tariffs is neither required by law nor verified in practice.[68] A risk of discrimination may exist in countries in which transparent and non-discriminatory special tariffs are required by law but not verified in practice.[69] In practice, verification appears to be understood differently from Member State to Member State. Whereas in Belgium the NRA has ensured transparency by requiring the USP to publish access conditions (see Case study 2-7), in other countries there is little publicly available information on access tariffs (e.g. in SE; see Case study 2-6).

It also appears that in at least some countries, users do not have equal access to special tariffs. Special tariffs for bulk letter services are not available to other postal operators in Cyprus, Poland, and Switzerland and not available to consolidators in Cyprus, the Netherlands, Poland, and Switzerland (special tariffs for direct mail: not available to other postal operators in Cyprus, Poland and not available to consolidators in Cyprus, Poland, and Romania. Competition cases from Belgium, Greece, and France (see case) show that non-discriminatory access for consolidators and private competitors is not granted naturally and regulatory or competition authorities have played an important role in ensuring access for these users.

Case study 2-6 Obligation to publish business customer prices (Sweden)

In 2012, the Swedish NRA PTS decided to oblige the universal service provider Posten AB in its licence conditions to publish information on prices and discounts for universal services in full detail on its Internet site. The reason for introducing the new provision was that PTS considered Posten’s price system for big business customers to lack transparency and to be so complex that customers were unable to calculate the final price of the service. Previous licences contained only an obligation to make available prices and potential rebates to all parties fulfilling the conditions for the services. Posten has filed a complaint against this licence condition at the Stockholm Administrative Court. A decision is pending.

Case study 2-7 BIPT’s decision on special tariffs for business senders and consolidators (Belgium)

In Belgium, the universal service provider, bpost, traditionally offered discounts based on volume, turnover, and mail preparation. These discounts were (as ‘conventional tariffs’) available to users emitting large volumes of mail: business customers, consolidators, and so-called mail handlers. In 2010, bpost decided to limit full discounts to senders. Thereafter, a consolidator and mail handler could receive discounts based only on the turnover of each customer and not the total volumes tendered by the consolidator or mail handler. This change resulted in significant price increases for customers of consolidators and mail handlers. This new pricing structure was justified by bpost as a way of stimulating the demand for mail against the background of falling mail volumes. In the view of bpost, large senders have a higher price elasticity than smaller users and thus it was economically efficient to grant larger senders higher discounts.

68 In these countries, transparency and non-discrimination for special tariffs are neither required by law nor verified in practice. No answer: UK.
69 For bulk letters: DK, HU, IT, LU, MT, PL, PT, RO; for direct mail: DE, DK, HU, LU, RO, NO

The Belgian NRA, BIPT, found no objective evidence that large senders have a higher price elasticity than smaller senders. Rather, BIPT found that the new price system was illegally discriminatory since users with the same mail volumes did not benefit from the same discounts. Moreover, BIPT considered the system to lack transparency since information on prices and discount classes was neither published nor did users receive information on all existing discount classes from bpost directly. BIPT obliged bpost to publish information on conventional tariffs and to pay a fine of € 2.3 million.

Case study 2-8 EETT's decision on downstream access to ELTA's network (Greece)

In 2008, ACS SA, a provider of courier and postal services for business mailers in Greece sought access to ELTA's network.[70] ELTA at this time already provided downstream access to a subsidiary of its own, Tachymetafores Elta, since 2003. ACS filed a complaint against ELTA at the Greek NRA EETT in December 2009, claiming that access conditions for ELTA's subsidiary lacked transparency and that ACS had been discriminated in terms of access conditions and prices. In July 2012, EETT fined ELTA for abusing its dominant position and obliged the incumbent to grant non-discriminatory access. EETT also recommended ELTA to publish the basic terms and conditions for access to its postal network and to notify to EETT all access contracts within ten days after the contract is signed.

Case study 2-9 Downstream access in Slovenia

Under the Postal Services Act (Article 32) in Slovenia, providers of 'interchangeable postal services' must be given access the universal postal service provider's network. The universal postal service provider (Pošta Slovenije d.o.o.) must conclude an agreement on access with providers of interchangeable postal services at their request, regulating the manner and conditions of accessing the postal network, cost-oriented price of the access, charging and invoicing, and other issues related to access.[71]

Acting on complaints from alternative postal operator that wanted to offer mail consolidation, the national regulatory authority APEK had ordered prices for these access service in year 2010, at discounts from 16,8 % up to 48,4 % compared to the full public tariff (see Pošta Slovenije's price list). These discounts are available only to providers of 'interchangeable postal services' but not to senders of bulk mail directly. These access prices thus represent preferential tariffs for other postal operators. According to Pošta Slovenije, some senders of bulk mail have registered as postal operators (providers of interchangeable services) following APEK's access decision in order to have access to those preferential rates.

70 European Regulators Group for Postal Services, *Report on 'access' to the postal network and elements of postal infrastructure*, ERGP (12) 36 (2012), p. 25.
71 See www.apek.si/access-to-network (accessed in June 2013).

#### 2.1.1.1 Access level and conditions

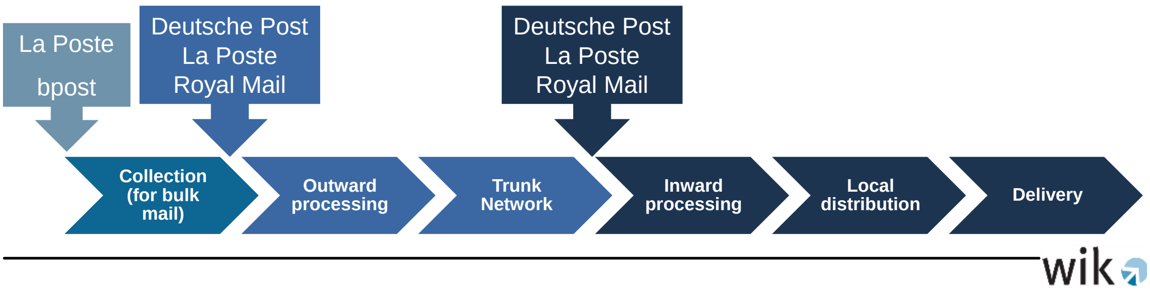
Access to downstream services of an incumbent postal operator can be reasonably granted at specific access points. Table 2-14 describes activities on commonly used access levels.

Table 2-14 Description of access levels

| Access level | Description |
|---|---|
| Bulk mail access points | Bulk mail access points are specific access points for business users with middle-sized volumes. Typically, only consignments up to a certain quantity can be handed over there. There are far more bulk mail access points than mail centres in countries where these access points are established (BE, FR). Alternatively, USP collect bulk mailings (depending on its size) directly from the customer. |
| Outward mail centre | Mailings that are consigned at the outward mail centre usually have to be pre-sorted at least basically. The minimum requirements at the outward mail centre for volumes or turnover are much easier to fulfil than at the inward mail centre. |
| Inward mail centre | Access to the inward mail centre means that users transport mail to the mail centre of destination where it is prepared for delivery. Access to the inward mail centre can involve detailed mail preparation by users, e.g. by:<br>• Postal code<br>• Delivery offices<br>• Group of delivery routes<br>• Delivery routes<br>• Delivery sequence |

Point of entry for access mail are usually the inward and outward sorting centre. Access may not be granted to all theoretically available access levels. In some cases, access does not enhance the overall efficiency of the mail sorting process. For example, access to a local delivery office does not exist in the survey countries. Figure 2-5 shows the access levels in Belgium, Germany, France, and the UK.[72]

Figure 2-5 Access levels in Belgium, France, Germany and the UK




Source: WIK-Consult

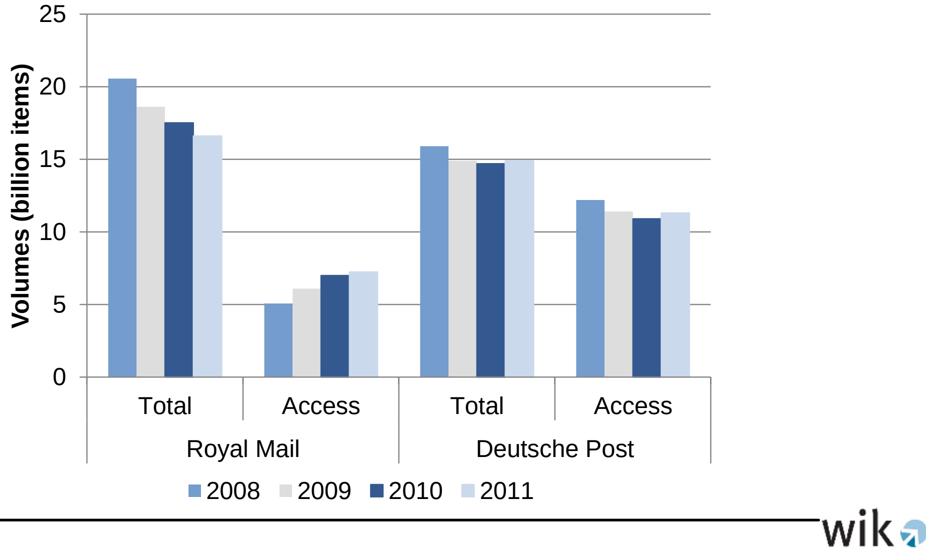
72 In UK, only volumes handed over at the inward mail centre are regarded as access volumes because business mailers always had access to these facilities. In this study, volumes consigned at the outward mail centre are nevertheless considered as access volumes.

Access to downstream services exists also in other countries but there is only little information on access levels, prices and conditions.[73] Access points in Belgium and France are bulk mail access points where mailers, postal operators, and consolidators hand over their mail. These access points can also be located at or next to a sorting centre.

### 2.1.1.2 Demand for downstream access

Special tariffs are offered by USPs in almost all survey countries, collectively accounting for 99 per cent of the European mail market. The exceptions are the Czech Republic and Latvia, where no special tariffs seem to be offered by USPs. Special tariffs are only slightly less common for direct mail and bulk parcel services than for bulk letter mail. Postal volumes conveyed under special tariffs are significant: for direct mail, the share amounts to 100 per cent in some countries (e.g. ES, FR, HU, LU, NL and SE)[74] and is still very high for bulk letter services (about two thirds or more of bulk letters in e.g. EL, FR, HU, LU, MT, SE, IS, CH).[75]

Figure 2-6 Development of access volumes in Germany and the UK




Sources: Bundesnetzagentur (2013), Lizenzpflichtige Briefdienstleistungen, Marktdaten 2008 – 2011; Ofcom (2012), The Communications Market 2012

73 This does not necessarily mean that access conditions are not transparent. As long as it is ensured that all interested parties, whether business mailers, private postal operators and consolidators, are able to receive transparent information, e.g. upon request restraints on competition should not arise. However, publishing access terms and conditions provides for the highest possible transparency.

74 No answer to this question from NRAs in AT, BE, BG, CY, CZ, DE, DK, EE, FI, IE, IT, LT, LV, MT, PL, PT, Ro, UK, IS, LI, NO, CH, HR.

75 No answer to this question from NRAs in AT, BE, CY, CZ, DE, DK, EE, ES, FI, IE, IT, LT, LV, NL, PL, RO, LI, NO, HR.

Access volumes in Germany and the UK are moving in opposite directions, see Figure 2-6. In the UK, access volumes have increased with sinking mail volumes. This might be due to the cost pressure on mailers who choose less expensive alternatives. The positive development of access can also be explained be the (near) absence of end-to-end competition in the UK, and the high level of access discounts.

In Germany, access volumes have declined in line with volume losses.[76] In countries with a low level of competition in the addressed mail segment, the largest share of access volumes stems from business customers. Only a minor share comes from consolidators and competitors. The exceptions are Germany, France, and the UK where substantial access volumes come from private postal operators and consolidators.

### 2.2.5 Differential application of value-added tax

In recent years, there have been several significant developments in the long story of value-added tax (VAT) and postal services. Historically, Member States exempted certain postal services of the public postal operator from the VAT even though the VAT was applicable to similar delivery services supplied by private companies. This practice was codified in the Sixth VAT Directive adopted in 1977. It declared that the supply of 'public postal services' should be exempt from VAT:

> Without prejudice to other Community provisions, Member States shall exempt the following: . . . (1) the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto.[77]

In practice, Member States interpreted this phrase differently and provided different exemptions for postal services.

In 2000, the Commission concluded that the VAT exemption for postal services distorts competition among postal operators:

> Public postal authorities are increasingly operating in competitive markets and competition would inevitably be distorted if only the public sector were exempted from VAT. This situation is hardly justifiable, and regular complaints have been received from operators.[78]

---

**76** In contrast to Germany, access volumes in the UK include only those volumes handed over at the inward mail centre, not at the outward mail centre.

**77** Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, OJ L145, 13 Jun 1977, p. 1. Article 13(a)(1).

**78** European Commission, *A Strategy to Improve the Operation of the VAT System within the Context of the Internal Market,* COM(2000) 348 (7 Jun 2000), p. 9.

In 2003, the Commission called upon the European Parliament and the Council to amend the Sixth VAT Directive to limit the VAT exemption to non-express addressed mail weighing less than 2 kg.[79] In 2004, the Commission revised its proposal by raising the weight limit for the proposed exemption to 10 kg.[80] The European Parliament and Council did not act on this proposal. The Commission withdrew its proposal in late 2012.[81]

Meanwhile, in 2006, the Commission began a review of VAT exemptions for postal services adopted by Germany, the United Kingdom, and Sweden. In so far as Germany and UK were concerned, the Commission took the position that those Member States 'exempted from VAT all or most of the postal services provided by their former postal monopolies [whereas] postal VAT exemption should only apply as far as the strict discharge of the universal service obligation is concerned'. In the case of Sweden, the Commission maintained that Sweden, which provided no exemption for postal services, had 'failed to apply an exemption which remains in Community legislation'.[82] In July 2007, the Commission formally requested that these three Member States modify their VAT legislation.[83] In 2008, the Commission referred an infringement case against the United Kingdom to the Court of Justice of the European Union (CJEU).[84]

In April 2009, however, the VAT exemption for postal services was the subject of different case before the CJEU. In the *TNT Post UK* case, arising from a question referred from a British High Court, the CJEU clarified the scope of postal services exemption in the Sixth VAT Directive in light of the Postal Directive as in effect prior to amendment by the Third Postal Directive.[85] In sum, the Court held that the UK could exempt Royal Mail from VAT (17.5 %) but not exempt Royal Mail's competitors such as TNT Post UK even though both Royal Mail and TNT Post UK were providing competing services in the same geographic markets. The reasoning of the court was follows:

> 36. *[P]ublic postal services within the meaning of Article 13A(1)(a) of the Sixth Directive must be regarded as operators*, whether they are public or private . . . who undertake to supply postal services which meet the essential needs of the population and therefore, in practice, to provide all or part of the universal postal service in a Member State, as defined in Article 3 of Directive 97/67.

---

**79** European Commission, *Proposal for a Council Directive amending Directive 77/388/EEC as regards value added tax on services provided in the postal sector*, COM(2003) 234 (5 May 2003).

**80** European Commission, *Amended proposal for a Council Directive amending Directive 77/388/EEC as regards value added tax on services provided in the postal sector*, COM(2004) 468 (8 Jul 2004).

**81** United Kingdom, Library of the House of Commons, 'VAT on postal services' (SN3376)(23 Apr 2013), p. 9 n. 32.

**82** European Commission, IP/06/484 (10 Apr 2006).

**83** European Commission, IP/07/1164 (24 Jul 2007).

**84** European Commission, IP/08/141 (31 Jan 2008).

**85** Case C-357/07, TNT Post UK Ltd v. The Commissioners for Her Majesty's Revenue and Customs, [2009] ECR I-3025.

> 37. *Such an interpretation is not contrary to the principle of fiscal neutrality, which precludes economic operators carrying out the same transactions from being treated differently in relation to the levying of VAT*. . . .
>
> 38. As the Advocate General observes in point 63 of her Opinion, the *assessment of the comparability of the services supplied hinges not only on the comparison of individual services, but on the context in which those services are supplied*.
>
> 39. As the facts in the main proceedings demonstrate, on account of the obligations described in paragraph 12 of this judgment, which are required under its licence and connected with its status as the universal service provider, an operator such as Royal Mail supplies postal services *under a legal regime which is substantially different* to that under which an operator such as TNT Post provides such services. [emphasis added, citations omitted]

The legal obligations which created the legal difference between Royal Mail and its competitors were described in paragraph 12 of Judgement as follows:

> 12 Royal Mail operates under a licence granted by the Postal Services Commission. . . . The regulatory framework of that licence is designed to ensure that a nationwide, comprehensive and affordable postal system is accessible by every natural and legal person. That licence contains the following obligations which apply only to Royal Mail: first, to provide the United Kingdom public with a universal postal service, including at least one delivery to every address every working day and one collection every day from every 'access point' within the United Kingdom, at affordable prices that are uniformly applied throughout the United Kingdom, and, secondly, to ensure that the United Kingdom public have ready access to that universal postal service through a sufficient number and density of access points.

In sum, the Court concluded that the UK could limit the VAT exemption to Royal Mail because the obligation to provide universal service imposed on Royal Mail established a legal distinction between Royal Mail and its competitors that justified an otherwise impermissible difference in legal treatment under the VAT law.

On the other hand, the Court concluded that the VAT exemption required by the Sixth Directive could not be interpreted to apply to all services offered by a 'public postal operator' but only to those '*postal services supplied in its capacity as the universal service provider.*' Specifically the exemption could not apply to '*specific services dissociable from the service of public interest, including services which meet special*

*needs of economic operators*'. Hence, the exemption did not apply to 'services supplied by the public postal services for which the terms have been individually negotiated'.[86]

In the wake of the *TNT Post UK* decision, both the Germany and the UK amended their VAT exemptions for postal services. In March 2010, Germany revised its VAT regulations to limit, from July 2010, the VAT exemption for postal services to universal services which are provided on the basis of the general terms and conditions of Deutsche Post and which neither vary with regard to the quality of features defined in the German Postal Universal Service Ordinance nor deviate from the tariffs generally accessible to anyone or from authorised charges.[87] Of course, it is self-evident that only Deutsche Post can qualify for a VAT exemption under such conditions.

In early 2011, the UK limited its VAT exemption for postal services to the 'supply of public postal services by a universal service provider.' The term 'public postal service' excludes a postal service if 'the price is not controlled by or under a specified condition' or 'any of the other terms on which the services are provided are freely negotiated'.[88] Since bulk mail services are not considered part of the universal service obligation in the UK, they are no longer VAT exempt. In response, the Commission withdrew the infringement case against the UK.

The UK, however, left the VAT exemption in effect for some downstream access mail services of Royal Mail.[89] Accordingly, TNT Post UK brought a second suit in the British High Court against Royal Mail and the British government. In brief, TNT argues that the 2009 decision of the Court of Justice of the European Union in *TNT Post UK* limited the scope of the VAT exemption to universal services and that downstream access services are not 'universal services' under UK law. On the other hand, Royal Mail and the UK government argued that CJEU's decision did not limit the VAT exemption to universal services but rather to services provided by the universal service provider 'in its capacity as such'. On 10 December 2012, the High Court agreed that the precise scope of the *TNT Post UK* judgement was unclear on this point and accepted a TNT request to refer another question to the CJEU for clarification.[90]

---

**86** Ibid., para 47.

**87** 'Germany Agrees to End of Deutsche Post Tax Privilege', *Reuters*, 26 Mar. 2010. http://www.reuters.com/article/2010/03/26/germany-post-idUSLDE62P12K20100326 [17 May 2013]. Scope of exemption is from Deutsche Post, 'Frequently asked questions - value-added tax (VAT)'. http://www.deutschepost.de/dpag?xmlFile=1022116&lang=de_EN [17 May 2013].

**88** United Kingdom, Her Majesty's Revenue and Customs, VPost3600. http://www.hmrc.gov.uk/manuals/vpostmanual/ VPOST3600.htm (accessed, 1 Jul 2013).

**89** According the European Regulators Group for Postal Services, the UK is unique is exempting access services from VAT: 'Except for the UK where access is VAT exempt, all countries which have permitted access to postal network applied VAT on the access service. Moreover, the majority of the respondents that do not currently have an access system, assume that if it was the case, access services would include VAT. Since such services are not within the scope of the universal service, VAT exemption in that particular case is not considered justified'. *Report on net Cost of USO – VAT as a benefit or a burden,* ERGP (12) 29 (2012), p.11.

**90** TNT Post UK, Ltd. v. The Commissioners for Her Majesty's Revenue and Customs and Royal Mail Group, Ltd., [2012] EWHC 3380 (10 Dec 2013).

As noted, the *TNT Post UK* judgment was based in part on the Court's interpretation of the Sixth VAT Directive in conjunction with the Postal Directive as it stood prior to amendment by the Third Postal Directive in 2008. As amended, the Postal Directive provides a significantly different legal context for interpretation of the Sixth VAT Directive.[91] The implications of the *TNT Post UK* judgment for implementation of the current Postal Directive are unclear, but they could be profound. The current Postal Directive permits, even encourages, Member States to rely upon market forces to ensure universal service where there is no significant risk that market forces will fail to provide universal services at a level that meets or exceeds the universal service obligation.[92] Yet it is unclear from the *TNT Post UK* judgment whether a Member State which relies on market forces to ensure universal service is still obliged to provide a VAT exemption for the 'supply by the public postal services' and, if so, which postal operators would be covered. If some postal operators are covered by a VAT exemption and others are not, then the whole concept of reliance on market forces is undermined.

More fundamentally, perhaps, revised Article 7(1) of the Postal Directive prohibits Member State to grant or maintain 'special rights for the establishment and provision of postal services'.[93] Could a VAT exemption for public postal services be regarded as a special right when it applies to the USP alone? If yes, how can the prohibition in the Postal Directive be reconciled with the requirements of the Sixth VAT Directive? If no — because the USP operates 'under a legal regime which is substantially different' — then is the Member State free to confer any type of legal privilege on a designated USP?[94] If so, it would appear that, despite the prohibition of the reserved area by the Postal Directive, a Member State may, in effect, use legal privileges to give the public postal operator an even broader monopoly over the entire universal service area.

While the *TNT Post UK* litigation has been going back and forth between British and EU courts, two major studies on the effects of the VAT exemption on the postal sector have shed further light on the extent of the distortions created by the VAT exemption for postal services.

---

**91** As Advocate General Kokott explained her opinion in the *TNT Post UK case*, 'Within the limits of the wording [of the Sixth VAT Directive], *it is necessary in this connection to take account of the factual and Community law context at the time of applying the exemption*. It is thus consistent with the practice of the Court, when interpreting individual concepts of the Sixth Directive, to refer to relevant rules of Community law outside the field of tax law, in so far as they pursue concordant objectives' (paras. 49-50, emphasis added).

**92** See section 1.5.2, below.

**93** See section 1.2.1, above.

**94** One could argue that the legal distinction created by 'under a legal regime which is substantially different' justifies only a difference in treatment under VAT law and not under other laws, because the VAT law stands is a special relationship to the Postal Directive, e.g., by virtue of the legal doctrine of *lex specialis*. However, in our view, the reasoning of the Advocate General, at least, seems to be grounded in the conclusion that the VAT exemption is non-discriminatory because of the legal distinctions established by the postal law rather than grounded in deference to *lex specialis* or some other particular attribute of the VAT law.

In December 2012, the European Regulators Group for Postal Services (ERGP) finished a study on the scope of the VAT exemption for postal services and the effects on postal markets. The ERGP report offers a useful survey of the status and scope of VAT exemptions, as well as a list of recent changes.

Table 2-15 Recent changes in the VAT exemption for postal services

| | Recent change | Effect of change |
|---|---|---|
| AT | The VAT exemption was lifted from non US products. | The final prices were changed in the dimension of? the amount of VAT. |
| BG | Postal money orders' service has been taken out from the US scope, respectively lifted from the VAT exemption. | The prices for 'Postal money orders' has been increased after the service was taken out of USO. |
| DE | The VAT exemption scope was reduced. Bulk mail and access services of Deutsche Post AG are not longer VAT exempted. | Deutsche Post AG has reduced prices for access services according to section 28 of the Postal A Act (incidental services). |
| ES | The VAT exemption was lifted from 2005 to 2010 on USO from non reserved services. | NA |
| FI | Since June 2011, the USP is VAT exempt. | Decrease of parcels prices by 15% and stability of letters' tariffs. |
| FR | The VAT exemption was lifted on some services from the Industrial Direct marketing and thus are no longer part of the US scope, thus subject to VAT. | No change in net prices (VAT is added to current prices) and an adjustment of the services to offset the effects of VAT for some clients who cannot recoup VAT. |
| HR | The VAT exemption was lifted from items of correspondence up to 2 kilograms, packages up to 10 kilograms, and up to 20 kilograms in international incoming traffic, cecograms up to 7 kilograms. | USP asked for? increase in prices. |
| IT | VAT at 22% as of July 2013. | |
| UK | Bulk products came out of USO and lost their VAT exemption status. A minor product 'keepsafe' was added to the USO scope and became subject to VAT | NA |
| CH | Since 2009, the USP opted for liability to taxation under art. 22, para 1, of the VAT Act. All postal services are since liable to VAT. | There were no change in final price |

Source: European Regulators Group for Postal Services, *Report on net Cost of USO – VAT as a benefit or a burden*, ERGP (12) 28 Rev. 1 (23 May 2013), p. 12. The ERGP study concludes that it is difficult to quantify the *net effects* of the VAT exemption on the USP and its competitors.[95] Yet, the fact of market distortions is unarguable. When we asked NRAs, 'In order to give effect to the principles of proportionality and least market distortion . . . should designation of a postal operator as a USP be limited to circumstances in which universal services cannot be ensured by reliance on market forces without formal designation of a USP?', the overwhelming answer was 'yes' (AT, CY, CZ, DE, DK, EE, EL, FI, HU, IT, LU, LV, NL, PL, SK, UK). No NRA answered in the negative.

95 European Regulators Group for Postal Services, *Report on net Cost of USO – VAT exemption as a benefit or a burden*, ERGP (12) 29 (2012), p. 19 ('it is obvious that different VAT treatments do affect prices, volumes, cost, labour market and welfare, but the level of those impacts still needs further analysis'). In our survey, NRAs were reluctant to concede that their VAT exemption for postal services causes market distortions.

A second study, completed in January 2013, was prepared by Copenhagen Economics for DG Taxation and Customs Union.[96] This report considered VAT exemptions for public service authorities generally (including waste/sewage disposal, education, cultural services, hospitals and broadcasting), but it was substantially motivated by concern for the VAT exemption for public postal service. The study finds that the VAT exemption for public services results in substantial distortions of competition between public services and other services and in the extent of outsourcing by public services. Copenhagen Economics urges repeal of the VAT exemption for postal services and other public services and concludes that —

> We find potential economic gains in our economic model of up to 0.34 per cent of GDP, corresponding to almost € 38 billion from a full taxation solution for all Member States in the covered sectors. By removing a significant distortion in the economy, we end up utilising resources better, thus spurring growth.

The Copenhagen Economics study offers the most comprehensive list of VAT exemptions for the postal sector to date. Table 2-16 summarises the findings of this study. In this table, red (or gray) fill indicates that the service is ensured as a universal service by the Member State (according to the NRA).

The Copenhagen Economics study also highlights the distortion in cross-border postal services due to different VAT regimes. Whether a cross-border postal service is exempt depends on the law in the sending country. For example, a postal service for bulk mail is VAT exempt in Belgium but not in the Netherlands. If a firm sends bulk mail from the Netherlands to Belgium, it will pay VAT on the value of the cross-border postal services. The reverse will be true if a firm sends bulk mail from Belgium to the Netherlands. The location of centralised printing and mail production will thus be affected, perhaps substantially, by different VAT exemptions the Member States.[97]

**96** Copenhagen Economics, *VAT in the Public Sector and Exemptions in the Public Interest: Final Report for TAXUD/2011/DE/334* (10 Jan 2013).
**97** Copenhagen Economics, *VAT in the Public Sector* (10 Jan 2013), pp. 112-13.

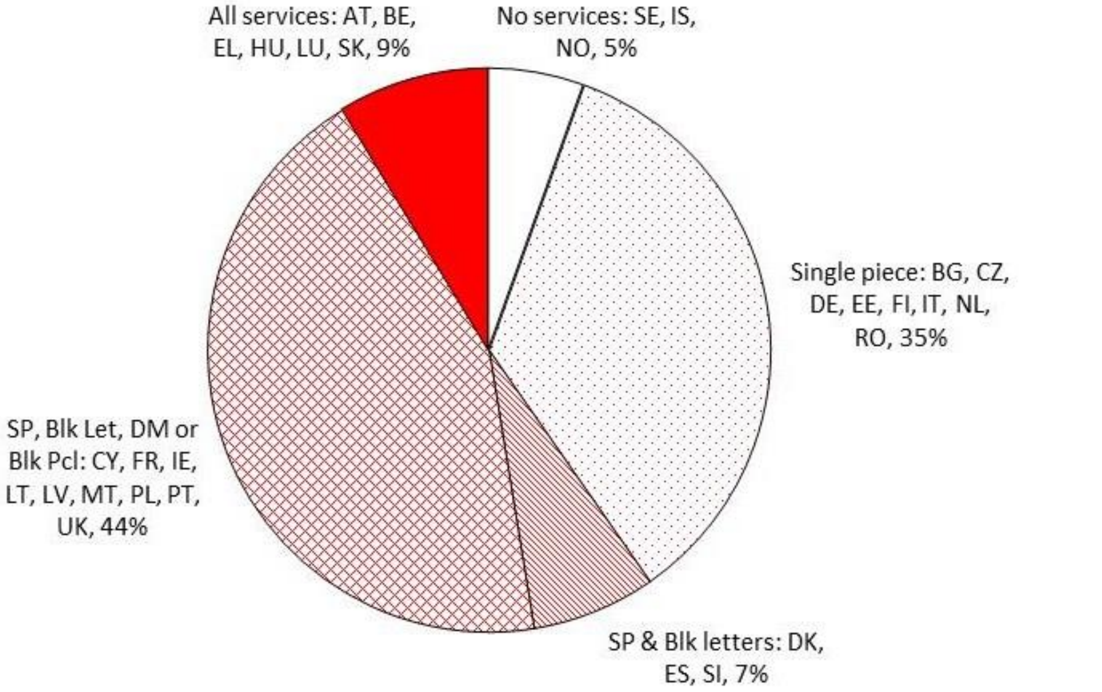
Table 2-16 VAT exempt postal services in each Member State




Source: WIK Survey

Key: Red vertical lines = VAT exemption. Blue fill = universal service according to NRA.

Figure 2-7 Scope of VAT exempt postal services in EU/EEA as a whole




Source: WIK Survey

Overall, it appears that 3 Member States (SE, IS, NO) and Switzerland, provide no VAT exemption for postal services of the USP. At the other end of the spectrum, 10 Member States (AT, CY, DE, EE, HU, LV, MT, PL, PT, UK) appear to grant VAT exemptions that exceed the scope of the universal service obligation. The remaining 14 Member States (we have no information on Croatia) appear to maintain a VAT exemption for the universal services of the USP, at least some of which are provided in competition with non-USPs. Where the VAT exemption affects competition between the USP and other providers of postal services, the result must be considered contrary to the objectives of the Postal Directive.

In sum, since 2010 the Commission has won major victories in its decade long effort to reduce distortions in competitive postal services market due to the granting of VAT exemptions that apply only to public postal operators. Extending equal treatment under the VAT laws to bulk postal services in Germany and the UK represents a significant step towards full market opening. Nonetheless, there remains substantial disagreement about the scope of the VAT exemption deriving from the Sixth VAT directive due to ambiguities in the decision of the CJEU's decision in the *TNT Post UK* case. That case has now been referred to the CJEU a second time. Ultimately, the manner in which the legal tension between the Sixth VAT Directive and the Postal Directive is resolved could

have profound implications for the liberalisation of universal services envisioned by the Third Postal Directive.

Case study 2-10 Additional VAT payments for Deutsche Post enforced by court (Germany)

German courts have required the Deutsche Post to comply with a recent court decision that provides for collection of VAT on the delivery of official court documents since July 2010.[98] Despite the law, Deutsche Post continued to offer this service at prices without VAT after July 2010. In February 2013, an appellate court excluded Deutsche Post from consideration in a tender procedure involving delivery of court documents due to its failure to include VAT in its bid. The case was brought by the German association for courier, express and postal service providers (BdKEP), which argues that Deutsche Post is liable for considerable retrospective tax payments.[99] In another decision in 2012, Deutsche Post was obliged to retrospectively pay VAT amounting to € 516 billion due to non-taxation of services during the years 1998 until June 2010, although the scope of the services encompassed by this decision is unclear.[100]

### 2.2.6 Differential application of customs and security controls

The practice of applying special customs procedures to USPs presents issues similar to those raised by the VAT exemption for USPs described in the preceding section. Historically, Member States have provided simplified procedures for the customs clearance of items conveyed between public postal operators. These 'postal customs' procedures are developed by the Universal Postal Union (UPU) and are uniform for all countries. They provide significant competitive benefits for USPs since they are not available to competing providers of postal services.[101]

Currently, the EU customs law is the 1992 Community Customs Code (CC).[102] The Community Customs Code is implemented by regulations issued by the Commission in 1993, the Consolidated Implementing Provisions (CCIP). The CCIP provide that some postal items (e.g., letters, non-dutiable printed matter) may pass customs without

98 Germany, Bundesministerium der Finanzen (2010), Umsatzsteuer; Steuerbefreiung für Post-Universaldienstleistungen ab 1. Juli 2010, Letter of 21 October 2010.

99 Germany, Bundesverband der Kurier-Express-Post-Dienste (2013), Postzustellungsaufträge umsatzsteuerpflichtig / Deutscher Post drohen hohe Umsatzsteuernachzahlungen, press release of 6 March 2013, Berlin.

100 It remained unclear which services have been taxed retrospectively. See Deutsche Post (2012), Deutsche Post DHL: Deutsche Finanzbehörden entscheiden über Umsatzsteuernachzahlung, press release of 5 June 2012, Bonn.

101 See WIK-Consult and James I. Campbell Jr., *Study on the External Dimension of the EU Postal Acquis* (Nov 2010), pp. 11-15.

102 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, OJ L 302, 19 Oct 1992, p. 1, as amended. Article 38(4) provides, 'Paragraph 1 (a) shall not preclude implementation of any provisions in force with respect to tourist traffic, frontier traffic, postal traffic or traffic of negligible economic importance, on condition that customs supervision and customs control possibilities are not thereby jeopardized'.

declaration and that other postal items may be declared using one of two customs declaration forms adopted by the Universal Postal Union, the CN 22 and CN 23.[103] Since the CCIP refers to 'postal authorities' and 'the postal administration' and to special customs forms developed by the UPU (i.e., CN 22 and CN 23), these procedures are available only to public postal operators or USPs.[104]

The Modernised Customs Code (MCC), adopted by the European Council and Parliament in 2008, was due to replace the CC and CCIP not later than April 2013.[105] Unlike the CCIP, the MCC does not provide special treatment for 'postal traffic' but instead allows simplified customs procedures for 'letters, postcards and printed matter and their electronic equivalents held on other media'.[106] The MCC is thus consistent with the spirit of the Third Postal Directive, adopted in the same year, in that it implies that customs procedures may vary according to the nature of items conveyed but should not vary depending on the identity of the carrier. Implementation of the MCC has been delayed due in part to revisions necessitated by the Lisbon Treaty.[107] In April 2013, the Commission proposed legislation that would fix the effective date of the MCC as 1 November 2013.[108]

In September 2012, representatives of all EU/EEA Member States met in the Congress of the Universal Postal Union (UPU) held in Doha. At the UPU Congress, the Member States agreed to continue the UPU-defined customs procedures for public postal operators (what the UPU calls 'designated operators'). The UPU-defined customs

**103** Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, OJ L 253, 11 Oct 1993, p. 1, as amended, Articles 237 and 238. The implementing provisions declare, inter alia, that (i) letters containing only personal messages or non-dutiable printed matter shall be admitted into the customs territory of the EU for free circulation without presentation to customs; (ii) letter post and parcel post items which are not subject to export duties may be exported without presentation to customs (acceptance by postal authorities being considered as equivalent to presentation to customs authorities); (iii) letter post and parcel post items not listed in (i) or (ii) shall be declared to customs for import or export using the UPU's CN 22 and CN 23 customs forms; and (iv) customs authorities may treat the postal administration as the declarant for customs purposes.

**104** Technically, according to the acts of the UPU, UPU customs forms may be used only by postal operators that are 'designated operators' under Article 2 of the 2012 Universal Postal Convention and only when such designated operators are not prohibited from using UPU customs forms by the workings of the UPU anti-ETOE resolution (see section 2.4.6, below). While it is clear that the UPU term 'designated operator' is essentially the same as what the CCIP refers to as 'postal authorities' and 'the postal administration', the two legal terms are not necessarily identical is all cases.

**105** Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), OJ L145, 4 Jun 2008, p. 1.

**106** Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), OJ L145, 4 Jun 2008, p. 1, Article 92(4).

**107** The Commission has proposed a 'recast' of the MCC to accommodate changes in the EU legal framework adopted in the Lisbon Treaty. In the recast MCC, the portions of former Art. 92(4) are renumbered as Article 121(5) without substantive change. See European Commission, *Proposal for a Regulation of the European Parliament and of the Council laying down the Union Customs Code (Recast)*, COM(2012) 64 (20 Feb 2012), p. 125.

**108** European Commission, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 450/2008 laying down the Community Customs Code (Modernised Customs Code) as regards the date of its application*, COM(2013) 193 (10 Apr 2013).

procedures for public postal operators thus appear to be inconsistent with non-discriminatory approach of the MCC.

In the present survey we asked NRAs to describe the extent to which the simplified UPU customs procedures were applicable to inbound international postal items delivered by the UPU. We particularly sought information on whether UPU procedures applied to the entry of small packets, parcels, and express mail as well the letters and documents. As in previous surveys, responses from the NRAs were incomplete. Only 10 NRAs were able to identify the products to which special UPU customs procedures applied (and these product lists appeared incorrect in several cases).[109]

To supplement our survey, therefore, we reviewed the customs forms which the U.S. Postal Service requires mailers to complete when sending postal items to public postal operators of EU/EEA.[110] From this exercise, it is apparent that all EU/EEA Member States apply UPU customs procedures to all postal items received from a foreign public postal operator regardless of whether the item is a letter or envelope, small packet,[111] parcel, or express mail item. Postal customs privileges are thus clearly not limited to universal services. They apply to all mail exchanged between 'designated operators' (in the UPU sense).

We also asked NRAs whether, as provided in the Universal Postal Convention, their USPs are immune to liability under their national laws. Eleven Member States confirmed such immunity (CY, CZ, DK, EE, HU, LU, LV, NL, RO, SK, IS). Four Member States (EL, IT, PL, SI) declared that their USPs did not benefit from custom law immunity.[112]

In sum, it all appears that all EU/EEA Member States have granted special rights to their USPs in relation to the customs clearance of inbound cross-border postal items. No Member State has limited such special rights to universal service services or market dominant services. In all probability, all Member States have granted their USPs immunity from liability under customs laws while imposing such liability on competing providers of postal services.

---

**109** Source: WIK Survey.

**110** U.S. Postal Service, *International Mail Manual* (6 May 2013). pe.usps.com/cpim/ftp/manuals/imm/full/imm.pdf [20 May 2013].

**111** All EU/EEA Member States appear to accept the very simple UPU CN 22 form for customs clearance of small packets, i.e., packages weighing 2 kg or less and conveyed with letters and documents. Public postal operators consider the small packets product to be the key to winning customers in the highly competitive international e-commerce business.

**112** In addition, 7 NRA reported that non-USPs were immune from liability under the customs laws. These answers likely reflect a misunderstanding of the question.

### 2.2.7 Special labour provisions in the postal sector

Labour laws may potentially have the object or effect of hindering new entrants by denying them the full flexibility in employment conditions that would otherwise be permitted under general labour legislation (e.g. flexibility in wages and work rules). Such laws may restrain the vigorous competition which full market opening is intended to permit. At the same time, it is apparent that Member States have a legitimate interest is preventing inappropriate or unacceptable working conditions for their citizens. Indeed, the Third Postal Directive specifically recognises respect for labour conditions as a legitimate condition for authorisations of postal operators.

In this regard, our survey with respect to labour laws asked whether Member States maintained laws or regulations which require providers of postal services competing of the USP(s) to comply with minimum wage requirements or other labour practices that are distinctly different from the minimum wage requirements or other labour practices generally applicable in non-postal sectors. Three Member States (BE, HU, NL) reported to this question affirmatively. The Belgian NRA explained that the objective of such laws was 'to ensure the continuity and quality of the US, on the one hand, and protection of employees, on the other hand'. Similarly the Dutch NRA observed that the law sought to 'secure labour conditions in a transitioning market'. In contrast, the Hungarian NRA emphasised the need to prevent fraud and collect taxes: 'The licence holder and the USP is obliged to have at least 2/3 of delivery staff in employed position. Employment rules are flexible, no full-time employment needed. Reason: To reduce grey economy.'

From this brief review, it appears that sector-specific labour regulations do not pose a significant impediment to liberalisation of postal markets in the EU as whole, although isolated provisions such as those in Belgium and the Netherlands may warrant further consideration in light of the balance of objectives set out in the Postal Directive.[113]

---

**113** See, in particular, Directive 2008/6, Recital 16: 'Complete market-opening will help to expand the overall size of the postal markets. It will further contribute to maintaining sustainable and quality employment within universal service providers as well as facilitate the creation of new jobs in other operators, new entrants and associated economic sectors. This Directive is without prejudice to the competence of Member States to regulate employment conditions in the postal services sector, which should not, however, lead to unfair competition. Social considerations should be taken into due account when preparing the opening up of the postal market'.

## 2.3 Application of the competition rules

### 2.3.1 Application of antitrust rules to the postal sector

During the period 2010-2013, National Competition Authorities (NCAs) in several Member States condemned postal operators for competition law infringements. The Commission did not adopt any decision on abuse of dominant position but fined one cartel in the freight forwarding sector which involved postal operators. The Commission also reviewed two concentrations with a Community dimension: it allowed one with conditions and prohibited the other. Many of these decisions have been appealed to the competent national courts or the General Court.

#### 2.3.1.1 Abuses and agreements cases decided at the national level

The NCAs of several Member States condemned postal operators for abuse of dominant position. The most frequent type of abuse was the offer of selective rebates to foreclose new entrants, but other types of abuse, such as refusal to deal, were also condemned. Competition authorities also condemned anti-competitive agreements.

Table 2-17 List of national competition cases before NCA or national Courts 2009-2013

| MS | Parties and reference | Market definition | Competition issue | Decision |
|---|---|---|---|---|
| **BE** | *Publimail/Bpost* 2012-P/K-32 | Unaddressed mail | **Discriminatory rebate** between large senders and consolidators | – Appeal on-going<br>– Competition Council **condemned** bpost on 10 Dec 2012 with a fine 37,4m € |
| **DE** | *Deutsche Post* | Letter services | **Price squeeze** in case of large volume mailers | On-going : investigation launched on 5 Nov 2012 |
| **DE** | **OLG Düsseldorf** *1&1-Internet/ Deutsche Post* VI-U (Kart) 14/11 | | DPAG **refused** to conduct the PostIdent procedure (the identification of a natural person) in favour of competitors | – Court of Appeal of Dusseldorf **overturned** on 30 Nov. 2011 the decision and decided that Deutsche Post did not abuse its dominant position as there were alternatives to PostIdent service.<br>– District Court of Cologne decided on 31 March 2011 that Deutsche Post abused its dominant position **with a refusal to deal**. |
| **DK** | *MediaCenter Danmark- Mediabroker- Carat Danmark- Initative Universal Media- OMD Danmark* | Unaddressed mail | **Horizontal agreement: customer sharing**<br>– MCD concluded 4 agreements with the media groups (Mediabrokder, Carat, IUM and OMD) for distribution of their unaddressed mail. The agreements contain clauses on ban on active sales, profit sharing and cool off periods<br>– MCD also concluded an agreement with Post Danmark to benefit the rebates offered by Post Danmark on the volume of mail brought by MCD and the 4 media groups. | Danish Competition authority **condemned** on 25 May 2011 MCD as well as Mediabroker, Carat, IUM and OMD for customer sharing: violation of Art. 101(1) TFEU which could not benefit from an exemption under Article 101(3) TFEU |
| **DK** | *Post Danmark* | Addressed magazine mail | – Individual target **rebate** (up to 40%) to the 4 large magazine senders between 2007 and 2009<br>– **Minimum threshold** per magazine title per posting in order to qualify as magazine mail | – Appeal Tribunal **confirmed** on 8 Dec. 2011 the condemnation for the first abuse (loyalty rebates) but **remanded** the case for the second abuse (minimum threshold)<br>– NCA **condemned** on 22 Dec. 2010 Post Danmark for both abuses having exclusionary effects which cannot be justified |
| **DK** | *Bring City Mail/ Post Danmark* | Direct mail | Retroactive **loyalty rebates** (up to 16%) with minimum threshold (at least 30 000 items per year or at least DKK 300 000) | – Appeal pending before the High Court<br>– Competition Appeal Tribunal **confirmed** the decision on 10 May 2010<br>– NCA **condemned** on 24 June 2009 Post Danmark |
| **DK** | *Forbruger Kontakt/ Post Danmark* | Unaddressed mail | Selective and discriminatory **rebates** to large customers (supermarkets). Price was above average incremental costs and below average total costs and there was not proved predatory intent | – The Supreme Court **overturned** the decision on 15 March 2013 because there is no sufficient evidence of exclusion<br>– The **CJEU replied** on 27 March 2012 to the Danish Supreme Court (Case C-209/10) that selective above-cost pricing is not prohibited per se, but the actual or likely exclusionary effects should be proved<br>– High Court **confirmed** on 21 Dec. 2007 the decision<br>– Competition Appeal Tribunal **confirmed** on 1 July 2005 the decision<br>– NCA **condemned** on 29 Sept. 2004 Post Danmark |

| MS | Parties and reference | Market definition | Competition issue | Decision |
|---|---|---|---|---|
| **ES** | *Unipost/Correos*<br>S/037/11 | | **Margin squeeze** for institutional customers through rebates | Case on-going |
| **ES** | *Ass/Correos*<br>S/034/11 | – Wholesale access to public postal network<br>– Retail market for the delivery of administrative notification | **Refusal to continue**, on Jan 2011, **to give access** to its postal network for the delivery of administrative notifications.<br>Correos had a dominant position on the wholesale market with 100% market share and controlling an essential facilities. It also had a dominant position on the retail market with 90% market shares. | CNC **condemned** on 22 April 2013 Correos with a fine of 3.3m €, to end the practice and to prepare an access reference offer within 2 months. |
| **ES** | *ASEMPRE/ Correos*<br>VATC/2458/03 | | **Violation of the 2005 Commitments** not to charge predatory prices (given discounts) to large customers | – Appeal on-going<br>– CNC **condemned** Correos with a fine of 4,8m € |
| **FR** | *Kiala/La Poste et Mondial Relay*<br>11-MC-01 | B2C parcel delivery | **Horizontal agreement** between La Poste and Mondial Relay (Groupe 3 Suisses) to offer a collection point delivery service on online sale sites combining its own network of post offices and retailers with that of Mondial Relay | Autorité de le concurrence **imposed** on 12 May 2011 **interim measures**: Suspension of the agreement |
| **IT** | *Selecta/ Poste Italiane*<br>A438 | Services for bulk mail delivery (entry, printing, enveloping) | Internal **discrimination** and unexpected change of business practice to exclude competitor | On-going: AGCM launched on 14 March 2011 an investigation |
| **IT** | *Poste Italiane*<br>A441 | – Bulk mail<br>– Registered mail<br>– Certified mail<br>– Direct mail (outside universal service since 2012) | **Rebate**: Exemption of VAT (21%) for individually-negotiated postal services to major clients (public institutions, financial services), most of which cannot recover the VAT paid.<br>Poste Italiane was dominant on the 4 markets | AGCM **condemned** on 24 April 2013 Poste Italiane and decided that:<br>– Italian law violates EU law according to Case C-357/07 *TNT Post UK* of April 2009 according to which VAT should be paid on individually negotiated terms, hence Italian law should be dis-applied<br>– Condemnation to apply, within 6 months, VAT to universal service products whose offer is based on individually negotiated agreements<br>– no fine imposed on Poste Italiane as the behaviour was imposed by Italian law (Case C-198/01) |
| **IT** | *TNT/ Poste Italiane*<br>A413 | – Bulk mail<br>– 'Guaranteed date and time' delivery<br>– Administrative acts deliveries by specialised agents | – **Exclusion strategy** in case of mail return<br>– **Predatory prices**, not covering incremental costs | – Appeal pending before the Council of State<br>– Administrative Tribunal of Roma requested on 25 June 2012 further insight on predatory prices<br>– AGCM **condemned** on 14 Dec 2011 on Poste Italiane with a fine of 39,4m € |
| **IT** | *Centro Servizi dirrite del cittadino/ Poste Italine*<br>A 414 | | **Postal payment slip** | AGCM **accepted** on 16 Dec 2009 commitments from Poste Italiane to offer alternative methods to pay postal payment slips |

| MS | Parties and reference | Market definition | Competition issue | Decision |
|---|---|---|---|---|
| **LU** | *Dintec/P&T*<br>2012-E-07 | Mail distribution | **Refusal to give access** postal boxes of P&T's customers (essential facility) | Conseil de la concurrence accepted on 18 Dec. 2012 **commitments** to allow competitors to give their mails for customers having a P&T postal boxes to P&T at lower charges than standard postal tariffs |
| **NL** | *Sandd/*<br>*PostNL (ex TNT)*<br>6207 | Mail distribution | Internal **discrimination** between Network VSP (a subsidiary of PostNL) and competitors for the use of PostNL network<br>– Predatory pricing: no proof that price was below LRAIC<br>– Long term exclusive contract<br>– Tying and bundling: no proof exclusion<br>– Price discrimination | – Appeal on-going<br>– NCA **rejected** the complaint on 25 May 2012 |
| **RO** | *Direct Marketing e.a./*<br>*Romanian Post*<br>52/2010 | – Standard direct mail<br>– Commercial mail | **Discrimination**: favourable treatment in relation to Infopress during 2005-2009<br>and **selective rebates** during 2008-2009 | – Appeal pending before the Supreme Court<br>– Court of First instance rejected the appeal<br>– Competition Council **condemned** on 17 Dec 2010 Romanian Post with a fine of 26m € and imposed remedies: non-discrimination for rebates and transparency of offers (to be published on the website of the operator), with monitoring by the Competition Council |
| **SE** | *NCA/Posten* | Large mail | **Rebates** (up to 20%) on all new volume as well as loyalty rebates | Competition authority **closed the investigation** on 3 May 2012 **without condemnation** as it did not find foreclosure effect when applying the equally efficient competitor analysis on all pricing of non-priority (economy) letters, addressed direct mails and non-priority (economy) periodicals |
| ***SE*** | **Market Court**<br>*BringCityMail/*<br>*Posten*<br>2011/14 | – Addressed direct mails<br>– Non-priority (economy) letters<br>– Non-priority (economy) periodicals | Special sorting retroactive **rebate** for addressed direct mails and then later extended to non-priority (economy) letters and non-priority (economy) periodicals | Market Court ordered Posten on 6 June 2011 **to discontinue the rebate** scheme, subject to penalty of 9,2m € |
| **NO** | *Privpak/*<br>*Posten Norge*<br>34 250 | B2C parcel services with over-the-counter delivery | **Exclusive dealing** to prevent competing suppliers of parcel services from using certain retail chains and outlets as collection points for their (supermarkets, filling station, …) | – EFTA Court **upheld** on 18 April 2012 (Case E-15/10) the decision but reduced the fine at 11.1m €<br>– EFTA Surveillance Authority **condemned** Posten on 14 July 2010 with a fine of 12,89m € |

Source: WIK survey and European Competition Network Briefs

*(a) Rebates*

Most national antitrust cases related to rebates offered by the postal incumbent aim at impeding entry of competitors or exclude new entrants altogether.

In Belgium, in December 2012, the NCA condemned the USP, bpost, for offering rebates to large senders of unadressed mail but not to consolidators tendering the same volume of unaddressed mail.[114]

In Denmark, the NCA condemned Post Danmark on several occasions for anti-competitive rebates. The most well-known case dated back to 2004 as it led to a preliminary ruling by the Court of Justice of the European Union in *Post Danmark v Konkurrencerådet*, C-209/10, decided in 2012 before final resolution by the Danish Supreme Court in 2013. The background of this case is as follows.

In 2004, the Danish competition authority condemned Post Danmark for granting selective and discriminatory rebates for unaddressed mail services in order to get back three large retailers which had taken their business to Forbruger-Kontakt, the main competitor of Post Danmark. The tariffs in dispute, after allowing for rebates, were above average incremental costs but below average total costs. In 2005, the Danish Competition Appeals Tribunal confirmed the condemnation by the NCA. In 2007, the Danish Eastern Regional Appeals Court agreed. Then the case went up to the Danish Supreme Court which referred to the Court of Justice of the European Union questions on the interpretation of Article 102 TFEU as applied to rebates.

Following the effects-based approach advocated by the Commission in its 2009 Guidance Paper,[115] the Court of Justice ruled that:

> Article [102 TFEU] must be interpreted as meaning that a policy by which a dominant undertaking charges low prices to certain major customers of a competitor may not be considered to amount to an exclusionary abuse merely because the price that undertaking charges one of those customers is lower than the average total costs attributed to the activity concerned, but higher than the average incremental costs pertaining to that activity, as estimated in the procedure giving rise to the case in the main proceedings. In order to assess the existence of anti-competitive effects in circumstances such as those of that case, it is necessary to consider whether that pricing policy, without objective justification, produces an actual or likely

**114** Note that bpost was also condemned for a similar practice by the postal regulatory authority BIPT: Decision of the BIPT Board of 20 July 2011 on the bpost conventional tariffs in the year 2010.

**115** Guidance of 3 December 2008 on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings O.J. [2009] C 45/7.

> exclusionary effect, to the detriment of competition and, thereby, of consumers' interests.[116]

In this ruling, the Court adopted the specific costs concepts used in the national proceedings, specifically,[117]

- The *incremental costs* are those costs destined to disappear in the short or medium term (3 to 5 years) if Post Danmark were to give up its business activity of distributing unaddressed mail.
- The *average incremental costs* includes among other things, not only those fixed and variable costs attributable solely to the activity of distributing unaddressed mail, but also elements described as common variable costs (75% of the attributable common costs of logistical capacity and 25% of non-attributable common costs).
- The *average total costs* are the average incremental costs to which is added a portion, determined by estimation, of Post Danmark's common costs connected to activities other than those covered by the universal service obligation.

Moreover in an *obiter dictum*, the Court of Justice stated that

> the fact that the practice of a dominant undertaking may, like the pricing policy in issue in the main proceedings, be described as 'price discrimination', that is to say, charging different customers or different classes of customers different prices for goods or services whose costs are the same or, conversely, charging a single price to customers for whom supply costs differ, cannot of itself suggest that there exists an exclusionary abuse.[118]

Thus, the Court of Justice refused to condemn price discrimination under competition law per se.

Based on these answers from the Court of Justice of the European Union, in March 2013 the Danish Supreme Court overturned the 2004 decision of the competition authority.

While this case was proceeding through appeals, the Danish competition authority condemned Post Danmark in two additional rebate cases. In June 2009, the NCA ruled against Post Danmark for providing retroactive loyalty rebates of up to 16 per cent in provision of direct mail services. Again in December 2010, the NCA condemned Post

**116** Case C-209/10, *Post Danmark v Konkurrencerådet*, [2012] ECR I-___, para. 44.
**117** Ibid., paras. 31-33.
**118** Ibid.,para. 30.

Danmark for providing rebates which were selective and very substantial (up to 40 per cent) in cases involving delivery of addressed magazine for four large magazine publishers.

In Spain, the NCA condemned the USP, Correos, for violating its 2005 commitments not to charge predatory prices to large senders via discounts,.

In Romania, in December 2010, the NCA condemned Romanian Post for selective rebates for services involving delivery of direct mail and commercial mail. The NCA imposed an obligation of non-discrimination in the granting of the rebates as well as more transparency for the tariff offers.

In Sweden, in June 2011 the Market Court ordered the USP, Posten, to discontinue, subject to penalty, a retroactive sorting rebate for addressed direct mails, non-priority letters and non-priority periodicals.

*(b) Rebates and VAT exemption*

Failing to include Value Added Tax (VAT) in a tariff of the USP and not in the tariffs of the other postal operators may have similar anti-competitive effects than a particular type of rebate. In April 2013, the Italian competition authority condemned the USP, Poste Italiane, because it did not charge major clients the applicable VAT on services involving delivery of bulk mail, registered mail, certified mail, and direct mail (outside the universal service obligation since January 2012) even when tariffs were individually negotiated. This case was complex because the VAT exemption was provided under an Italian law, which in turn violated EU law, in particular, the Sixth VAT Directive.[119] Therefore, the NCA decided to disregard the Italian law and instructed Poste Italiane to include VAT in all tariffs which are individually negotiated as provided by EU law.

*(d) Refusal to deal*

In the 2010 to 2013 period, several national competition law cases related to refusal by postal incumbents to give access to new entrants to elements of their networks.

In Spain, in 2013, the NCA condemned the USP, Correos, because it refused to continue to accept for delivery administrative notifications (imposed for administrative and judicial entities but not part of universal service). The NCA required Correos to adopt a reference offer for the service.

In Luxembourg, the NCA investigated the refusal by the USP, P&T, to give access to its postal boxes. The case was closed after P&T committed to give access to its postal boxes at lower charges than the standard postal tariffs.

**119** In the Case C-357/07, *TNT Post UK Ltd v The Commissioners for Her Majesty's Revenue and Customs,* [2009] ECR I-3025, the Court of Justice decided that VAT exemption cannot be granted on individually negotiated tariffs.

In Germany, the Cologne District Court condemned Deutsche Post in 2012 for refusing to conduct an identification procedure for natural persons in post offices (the PostIdent procedure) at the request of providers of electronic communications services that compete with Deutsche Post's products in this market.

However, this decision was overturned by the Dusseldorf Court of Appeal as the court held competitors could rely on alternatives to PostIdent.[120]

*(e) Exclusive dealing and horizontal agreements*

In France, in 2011, the NCA forced the suspension of a non-exclusive agreement between La Poste and Mondial Relay (part of a major retailer Groupe 3 Suisses) under which La Poste could have used the network of delivery points of Mondial Relay. Although the agreement did not contain an exclusivity clause, the NCA considered that it might have anti-competitive effects: first, la Poste would have extended its network of delivery points (by adding its own network with that of Mondial Relay), hence would have got an important competitive advantage over its competitors on the B2C parcel delivery market; second, Mondial Relay would have less incentive to conclude other agreements with existing or new delivery operators; and third, the competition between La Poste and Mondial Relay would have weakened.

In Norway, in 2010, the EFTA Surveillance Authority condemned the USP, Posten, for concluding contracts with retail chains, supermarkets, petrol stations, and similar outlets which provided that these facilities would serve as parcel collection centers for Posten's customers on condition that they would refuse to provide similar services for competing postal operators. This decision was upheld by the EFTA Court, but the amount of the fine was slightly reduced.

#### 2.3.1.2 Cartel cases decided by the European Commission

In March 2012, the Commission condemned cartel arrangements involving 14 companies providing international air freight forwarding services — in particular on the Europe-USA and the Europe-China/Hong Kong routes — during the period 2002 to 2007.[121] The companies colluded on prices through 4 different agreements:

- 'New export system'. The freight forwarders agreed on a surcharge, based on the size of the customer, for providing an electronic declaration for exports introduced by the UK in 2003.

**120** The court decision mentions one provider of such an alternative service, but the name of this provider has been blackened in the public version of the decision.
**121** Decision of the Commission of 28 March 2012, Case 39.462 – Freight forwarding, OJ C 375, 5 Dec 2012, p. 5.

- 'Advanced manifest system'. The freight forwarders agreed on a surcharge for preparing documentation required by US Customs providing advance information on goods to be shipped to the US.
- 'Currency adjustment factor'. Following appreciation of the Chinese currency (RMB) against the US dollar in 2005, the freight forwarders agreed to shift the currency for contracts for importing goods from China/Hong Kong to Europe from US dollars to Chinese RMB or, if not possible, to add a surcharge for contracts in US dollars.
- 'Peak season surcharge'. In breakfast meetings held in Hong Kong the freight forwarders agreed to add a surcharge on transport charges for goods shipped from China/Hong Kong to Europe during the peak pre-Christmas period.

The Commission fined 14 international groups of companies a total of € 169 million. Deutsche Post received full immunity from fines under the Commission's 2006 leniency notice for all four cartels, as it was the first to reveal their existence to the Commission.

The Commission's decision is being appealed to the General Court by the companies involved, and those cases are still pending.[122]

#### 2.3.1.3 Merger cases decided by the European Commission

*(a) La Poste/Swiss Post joint-venture (2012)*

In July 2012, the Commission cleared, subject to conditions, the creation of Asendia, the joint venture between the French La Poste and Swiss Post.[123] The French and Swiss USPs established Asendia to carry out most of their current activities in the area of international mail delivery services, including international outbound business mail delivery services, mail preparation services, marketing for print media, contract logistics for print media distribution, logistics services, express delivery services, as well as freight forwarding and international standard B2C parcel delivery in various Member States across the EEA. The joint venture does not include the inbound and outbound mail activities carried out by La Poste in France and Swiss Post in Switzerland. The joint venture affected several markets, but the Commission raised competitive concerns in only one — the French market for standard outbound international addressed mail delivery services offered to business customers — because the joint venture would have led to the disappearance of the Swiss Post subsidiary in France, a dynamic player on a market with declining volumes and on which no new entrants were to be expected.

**122** Case T-251/12, *EGL and Others v Commission*; Case T-254/12, *Kühne + Nagel International AG and Others v Commission*; Case T-264/12, *UTi Worldwide and Others v Commission*; Case T-265/12 *Schenker v Commission*; Case T-270/12 *Panalpina Welttransport and Others v Commission*; Case T-267/12, *Deutsche Bahn and Others v Commission*.

**123** Decision of the Commission of 4 July 2012, Case M. 6503, *La Poste/Swiss Post/JV*.

When Swiss Post agreed to divest its French subsidiary, the Commission cleared the creation of Asendia.

*(b) UPS/TNT Express (2013)*

In January 2013, the Commission prohibited the proposed acquisition of TNT Express by UPS.[124] This was a rather exceptional decision by the Commission if having in mind that it has prohibited only 24 mergers out of 5,254 cases notified since the EU merger control began in 1990.

The Commission's decision begins by defining the product market as the market for small package (weighting up to 31.5kg) express deliveries (i.e. D+1) within the European Economic Area (EEA). The Commission distinguished the delivery of small package from freight delivery as the former can be handled by a single person without specific equipment. It also distinguished express from deferred delivery because express is used by business customers for items — such as time-critical documents, finished or semi-finished goods, spare parts, samples — which have to be delivered the day after collection. Finally, the Commission distinguished international delivery within the EEA from domestic and from international delivery to the rest of the world. The geographical scope of the market is national because, on the demand side, most customers negotiate their contract on a national basis and, on the supply side, a supplier cannot easily gain new customers and volumes in a given country without having already a market presence in that country.

Three main players are active on most of the national markets for small package express deliveries within the EEA: UPS, TNT Express, and DHL (a subsidiary of Deutsche Post). FedEx, a US-based company, is a fourth player with a much smaller size in Europe. All those suppliers are 'integrators' controlling air and ground delivery networks. Postal operators, which are not integrators, cannot exert strong competitive pressure on the integrators because they rely heavily on road rather than air transport and therefore cannot guarantee the same speed and quality. Moreover, entry barriers are high and the countervailing buying power is not very strong. On this basis, the Commission found that a merger that would reduce the number of major competitors from three to two would significantly impede effective competition in 15 national markets (Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Romania, Slovakia, Slovenia and Sweden).

To address these concerns, the merging parties proposed structural and behavioral remedies: (1) divestment of TNT Express' subsidiaries in the 15 countries where the Commission had identified competition concerns, plus two additional countries (Spain and Portugal) if the purchaser was not an integrator in order to increase the divested intra EEA express volumes and (2) a commitment to provide access to UPS's intra-

**124** Decision of the Commission of 30 January 2013, Case M 6570, *UPS/TNT Express*.

European air network for five years if the purchaser was not an integrator, in order to allow the purchaser to continue the intra-EEA express operations of the divested businesses. However, the Commission concluded that very few buyers would be suitable and would have the capacity and the incentive to operate the divested TNT Express business profitably. Among the integrators FedEx was the only possible purchaser (purchase by DHL would raise similar competitive concerns). Purchase by a non-integrator (mainly USPs) was deemed unsatisfactory because of the risk that the purchaser would concentrate on domestic and international deferred delivery and provide genuine competition in the express international delivery market. Therefore, the Commission required that the parties to find a suitable buyer before implementing of the merger (up-front buyer). The parties were unable to satisfy this condition, and the Commission concluded that the merger should be prohibited.

In April 2013, UPS appealed at the General Court (Case T-194/13) the prohibition decision submitting that the Commission erred in its analysis of the price effects, the countervailing buying power, and the efficiencies.[125] The case is still pending.

### 2.3.2 Application of State Aids rules to the postal sector

Under EU law, Member States may generally give assistance to postal operators to compensate them for the costs of requiring them to provide 'services of general interest'. If the State provides the compensation under the same conditions as a private investor would do, such compensation does not confer any economic advantage and is not a 'state aid' according to Article 107(1) TFEU. Similarly, if the public compensation meets the four conditions of the *Altmark* case,[126] the compensation is not a state aid and hence does need to be notified to the Commission. Alternatively —

- If the public compensation does not meet the four *Altmark* conditions, the compensation is a state aid, but it may be exempted on the basis of Article 106(2) TFEU if it does not exceed the net cost of the providing a 'service of general economic interest' (SGEI) and meets the conditions of the Commission

**125** Action brought on 5 April 2013, Case T-194/13, *United Parcel Service v Commission*, *O.J.* 25.5.2013, C 147/30.

**126** Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH,* [2003] ECR I-7744. The Court of Justice decided that a public compensation is not a state aid when (1) the recipient undertaking is actually required to discharge public service obligations and those obligations have been clearly defined; (2) the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner; (3) the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations; and (4) where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

2005 SGEI Framework,[127] which is now replaced by the 2011 SGEI Framework.[128]

- If the public compensation does not meet the *Altmark* conditions and criteria of the Commission SGEI Framework, then the public compensation may only be authorised if it meets the conditions for an exemption on the basis of Article 107(2) TFEU (whose application is limited) or on the basis of Article 107(3) TFEU (e.g. aid for rescuing and restructuring).

During the period 2010 to 2013, the Commission adopted several state aid decisions in the postal sector. Most of the decisions dealt with compensation justified by the costs of SGEI such as maintaining the postal network in unprofitable areas (e.g. in rural areas) or ensuring low tariffs for certain types of mail (e.g., the press or electoral candidates) or for certain customers (e.g., the blind and partially sighted). In the majority of those cases, the Commission decided that the aid did not lead to overcompensation and exempted the aid on the basis of Article 106(2) TFEU. In one case (Belgium) however, the Commission decided that the aid overcompensated the SGEI costs and ordered the recovery of this overcompensation.

Some decisions or part of decisions dealt with compensation justified by the high legacy pension costs. In one case assessed under Article 107(3) TFEU (Germany), the Commission ordered the State to recover part of the given aid.

Finally, some decisions dealt with compensation justified by other rationales such as the costs of corporate restructuring.

---

**127** Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L312, 29 Nov 2005, p. 67; and Community framework for State aid in the form of public service compensation, OJ C295, 29 Nov 2005, p. 4.

**128** Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L7, 11 Jan 2012, p. 3; and Communication from the Commission of 20 December 2011, European Union framework for State aid in the form of public service compensation (2011), OJ C8, 11 Jan 2012, p. 15.

Table 2-18 List of Commission State aids cases 2010-2013

| MS | Date of the Commission decision and reference of the case | Issue | Decision |
|---|---|---|---|
| **BE** | **25 Jan. 2012**<br>SA.14 588<br>C 20/2009<br><br>**Appeal** by bpost and Post Invest Europe **pending at the General Court** (Cases T-412/12 and T-413/12) | 1. Capital injection of **297.5m €** and **40m €**<br>2. Public service missions (delivery of newspapers and magazines): **5 200m €** for 1992-2010<br>3. Pension costs: **3 800m €** during the pension reform of 1997<br>Investigation done on the basis of Case C-148/09 *Belgium v. Deutsche Post and DHL* of Sept. 2011 | 1. **Not state aid**: conform to private investor<br>2. Overcompensation: **Recovery for 417m €** (SGEI Framework 2005)<br>3. **Compatible** |
| **BE** | **2 May 2013**<br>SA 31 006 | Public services missions (delivery of newspapers and periodicals, home delivery of pension, basic banking services, maintenance of widespread network): **300m €** for 2013-2015 | **Compatible** on the basis of Art. 106(2) TFEU (SGEI Framework 2011) |
| **DE** | **25 Jan. 2012**<br>SA 17 653<br>C 36/07<br><br>**Appeal** by Germany and Deutsche Post **pending at the General Court** (Cases T-143/13 and T-152/12) | 1. Public service mission: **5 600m €** for 1990-1995<br>2. Pension costs: **37 000m €** since 1995<br>Investigation confirmed in Case *Deutsche Post v. Commission* T-421/07 of 8 Dec. 2011 | 1. **Compatible** on the basis of Art. 106(2) TFEU (SGEI Framework 2005)<br>2. **Recovery (500 – 1 000m €).** Germany determined the recovery at **298m €** |
| **EL** | **25 Jan. 2012**<br>SA.32 562 | Modernisation to broaden range of services offered on the whole territory : **52m €** | **Compatible** on the basis of Art. 106(2) TFEU (SGEI Framework 2005) |
| **FR** | **26 Jan. 2010**<br>C 56/07<br><br>**Confirmed by the General Court** on 20 Sept. 12 in Case T-154/10<br><br>**Appeal** by France **pending at the Court of Justice** (Case C-559/12P) | Free unlimited State guarantee | **To be removed** by 31 March 2010 |
| **FR** | **25 Jan. 2012**<br>SA.34 027 | 1. Territorial coverage: local tax relief of 764m € for 2008-2012 (150m€/year)<br>2. Transporting and delivery the press: **1 200m €** for 2008-2012 (240m€/year) | 1. **Compatible** on the basis of Art. 106(2) TFEU (SGEI Framework 2005)<br>2. **Compatible** |
| **IT** | **20 Nov. 2012**<br>SA.33 989 | 1. Universal service 2009-2011: **1 100m €** for 2009-2011<br>2. Reduced tariffs offered to publishers, NGOs, electoral candidates: **458m €** for 2009-2011 for 2009-2011 | 1. **Compatible** on the basis of Art. 106(2) TFEU (SGEI Framework 2011)<br>2. **Compatible** on the basis of Art. 106(2) TFEU (SGEI Framework 2011) |

| MS | Date of the Commission decision and reference of the case | Issue | Decision |
|---|---|---|---|
| **PL** | **4 Nov. 2010**<br>N 312/2010 | Prolongation of the scheme to compensate costs of services statutorily exempted from postage fees (2011-2012): **1.03m €**<br>1. Exemption from postage fees in favour of blind and partially sighted persons<br>2. Exemption from postage fees of items containing the compulsory library copies | 1. **Compatible** on the basis of Art. 107(2a) TFEU<br>2. **Compatible** on the basis of Art. 107(3d) TFEU |
| **UK** | **23 March 2011**<br>N 508/2010 | 1. Continuation of Network Subsidy Payment to keep unprofitable offices: **212m €** in 2011<br>2. Working Capital Facility: **up to 1 348m €** | **Compatible** on the basis of Art. 106(2) TFEU (SGEI Framework 2005) |
| **UK** | **21 March 2012**<br>SA.31 479 | 1. Pension costs<br>2. Restructuring aid: **1 311m €** of debt reduction for 2010-2015 | 1. **Compatible**<br>2. **Compatible** on the basis of Rescue and restructuring aids Guidelines |
| **UK** | **28 March 2012**<br>SA.33 054 | 1. Net costs incurred to keep and modernise non-commercially viable offices: **1 383m €** for 2012-2015<br>2. Continuation of working capital facility: **up to 1 377m €** | 1. **Compatible** on the basis of Art. 106(2) TFEU (SGEI Framework 2011)<br>2. **Not state aid**: market investor criteria |

Source: DG Competition website (NACE Code H.53 - Postal and courier activities)

#### 2.3.2.1 State Aids to compensate the costs of the services of general economic interest

*Belgium (2012)*[129]

In 2003, the Commission approved a capital injection of approximately €300 million by the Belgian State.[130] However, on appeal by bpost's foreign competitors, the Commission's decision was annulled by General Court in 2009.[131] The Commission also received complaints from bpost's Belgian competitors in the press distribution business. As a result, in 2009, the Commission opened a new investigation on all State measures in favour of bpost during the period 1992-2010. This investigation resulted in a new decision in January 2012.

First, the Commission concluded that two capital injections of € 297.5 and € 40 million were carried out under conditions that a private market investor would have accepted and hence did not constitute a state aid according to Article 107 TFEU.

Second, the Commission found that yearly compensations, amounting to €5.2 billion between 1992 and 2010, granted to bpost for the delivery of newspapers and magazines partly exceeded the net cost of the services of general economic interest. Therefore, according to the 2005 SGEI Framework, the Commission ordered Belgium to recover €417 million of incompatible aid.

The second decision has been appealed by bpost and by Post Invest Europe.[132] They argue that the Commission made four mistakes in:

- concluding that the bpost's retail network was not a distinct SGEI, hence finding that the compensation received from the Belgian State for the retail network constituted overcompensation;
- concluding that retail network costs, which are induced by the universal service obligation, should not be taken into account when calculating the amount of profits from the reserved area of the universal service that exceed the level of a reasonable profit;
- concluding that net costs of non-mail SGEI's must be offset with all the profits from the reserved area of the universal service, inasmuch as these profits exceed a reasonable profit; and

---

**129** Decision 2012/321 of the Commission of 25 January 2012, *Mesures en faveur de La Poste belge,* OJ L170, 26 Jun 2012, p. 1.

**130** Decision of the Commission of 23 July 2003, Case N 763/2002.

**131** Case T-388/03, *Deutsche Post and DHL International v Commission*, [2009] ECR II-199. This judgment was appealed by Belgium, but confirmed by the Court of Justice in C-148/09, *Belgium v. Deutsche Post AG and DHL International,* [2011] ECR I-___.

**132** Action brought on 17 September 2012, Case T-412/12 *bpost v. Commission*, OJ C343, 10 Nov 2012, p. 20 and action brought on 20 September 2012, Case T-413/12 *Post Invest Europe v. Commission*, OJ C343, 10 Nov 2012, p. 21.

- failing to carry forward bpost's under-compensation accumulated over the years 1992-2005 to offset the amounts of bpost's alleged over-compensation over the period 2006-2010.

*Belgium (2013)*[133]

In March 2013, Belgium notified the Commission of plans to give a yearly compensation of around €300 million to finance SGEI entrusted to bpost (among others, the distribution of newspapers and periodicals, the home delivery of pensions, basic banking services and the maintenance of a widespread network) by the 5th Management Contract over the period 2013-2015. As foreseen by the 2011 SGEI Framework, Belgium organised a public consultation which confirmed the essential social and economic role of the public services entrusted to bpost. Furthermore, Belgium committed to organise a competitive, transparent, and non-discriminatory tender for the delivery of newspapers and periodicals in Belgium and to award a concession to the selected operators for taking over the provision of this service as of 1 January 2016. The amount of compensation was determined on the basis of the new calculation methodology. The compensation mechanism also includes incentives for bpost to increase the efficiency and quality of its public services. The Commission therefore concluded that the compensation does not exceed the cost for fulfilling the services, hence can be exempted under Article 106(2) TFEU.

*France (2012)*[134]

In 2012, the Commission reviewed two types of aid given to La Poste as compensation for SGEI foreseen in the public-service contract in effect from 2008 to 2012:

- The first aid aims to ensure high density of postal services particularly in rural areas and amounts by relieving La Poste of local taxes of € 150 million/year (i.e. € 764 million over the period of the public service contract) ;

- The second aid aims at funding the transport and the delivery of press items and amounts to a subsidy of € 240 million/year (i.e. € 1.2 billion over the period of the public service contract).

Applying the 2005 SGEI Framework, the Commission considered that both aids were not higher than the net costs of the SGEI and hence could be exempted under Article 106(2) TFEU.

---

**133** Decision of the Commission of 2 May 2013, Case SA. 31 006 - *State compensations to bpost for the delivery of public services over 2013-2015.*

**134** Decision of the Commission of 25 January 2012, Case SA 34 027 - *Abattement fiscal en faveur de LA POSTE pour le financement de la présence territoriale*.

*Germany (2012)*[135]

In 1999, the Commission started an investigation, which was extended in 2007 following complaints from competitors. In May 2011, the Commission further enlarged the scope of the investigation to look more closely into pension subsidies.[136] One part of the decision related to the public transfer of € 5.6 billion between 1990 and 1995 given to Deutsche Post to compensate the cost of public service obligations. Applying the 2005 SGEI Framework, the Commission concluded that this aid did not lead to over-compensation and hence could be exempted under Article 106(2) TFEU. The other part of this case related to pension costs compensation (see infra).

*Greece (2012)*[137]

In 2012, the Commission reviewed a payment of € 52 million from the Greek state to Hellenic Post (ELTA) for modernising its infrastructure and improving the quality of public service, in particular for:

- enlarging the range of services offered to citizens within the whole territory with an emphasis on peripheral regions;
- increasing the availability of existing services and supporting the provision of new services to a significantly larger number of users; and
- reducing the cost of public service.

Applying the 2005 SGEI Framework, the Commission found that the aid would allow ELTA to partially cover the modernisation costs of its public service infrastructure and earn a reasonable profit over the economic life of the subsidised investments (2012-2021) and hence could be exempted under Article 106(2) TFEU.

*Italy (2012)*[138]

In 2012, the Commission reviewed two types of aid received by Poste Italiane in the period 2009 to 2011. The first aid amounted to € 1.1 billion to provide the universal postal service in Italy. The second aid amounted to € 458 million to compensate the reduced tariffs for published, non-profit organisations and electoral candidates. Applying the 2011 SGEI Framework, the Commission considered that neither aid led to overcompensation and hence could be exempted under Article 106(2) TFEU.

**135** Decision 2012/636 of the Commission of 25 January 2012, *Complaint against Germany for unlawful state aid to Deutsche Post,* OJ L289, 19 Oct 2012, p. 1.

**136** The legality of both extensions was confirmed by the General Court. Case T-421/07, *Deutsche Post v Commission*, [2011] ECR II-____.

**137** Decision of the Commission of 25 January 2012, Case SA. 32 562 - *Aid to the Hellenic Post*.

**138** Decision of the Commission of 20 November 2012, Case SA 33 989 - *State compensations for the delivery of the universal service over 2009-2011 and State compensations for reduced tariffs offered to publishers, not-for-profit organisations and electoral candidates over 2009-2011*.

*United-Kingdom (2011)*[139]

In March 2012, the Commission reviewed two types of aids to be given to the Post Office. The first aid was the continuation for 2011 of the network subsidy payment of GBP 180 million (at the time € 211 million) to maintain non profitable post offices in particular in rural areas. The second aid was the access for 2011 to a working capital facility of up to GBP 1 150 million (at the time € 1 348 million) to provide sufficient liquidity to carry out public service obligation. Applying the 2005 SGEI Framework, the Commission considered that the aid did not led to overcompensation and hence could be exempted under Article 106(2) TFEU.

*United-Kingdom (2012)*[140]

In March 2012, the Commission assessed two types of aids to be given to the Post Office. The first type of aid is the continuation, with an increased interest rate, of the access to working capital facility up to GBP 1 150 (at the time € 1 377 million) to provide sufficient liquidity to carry out its public service obligation. The Commission considered that the revised terms for access to this liquidity facility ensure that it is provided on market conditions, and hence it did not constitute a state aid according to Article 107 TFEU. The second type of aid amounted to GBP 1 155 (at the time € 1 383 million) to maintain and modernise non-commercially viable post offices. Applying the 2011 SGEI Framework, the Commission considered that the aid did not lead to overcompensation and provided an incentive for an efficient provision of the public service with yearly efficiency indicators; hence, it could be exempted under Article 106(2) TFEU.

#### 2.3.2.2 State Aids to compensate the legacy pension costs

*Belgium (2012)*[141]

In the 2012 bpost Decision, the Commission also analysed the relief of € 3.8 billion pension liabilities granted by the Belgian state in 1997. The Commission decided that the compensation did not confer any undue advantage since it only relieved bpost from payment of the excessive pension costs of civil servants. Following its previous practice, the Commission verified that the social security contributions borne by bpost Post were equivalent to those of private competitors.

**139** Decision of the Commission of 23 March 2011, Case N 508/2010 - *Post Office Limited (POL) Continuation of Network Subsidy Payment and Working Capital Facility*.

**140** Decision of the Commission of 28 March 2012, Case SA 33 054 - *Compensation for net costs incurred to keep a non-commercially viable network for the period 2012-15 and the continuation of a working capital facility*.

**141** Decision of the Commission of 25 January 2012, OJ L170, 26 Jun 2012, p. 1.

*Germany (2012)*[142]

In the 2012 Deutsche Post decision, the Commission also analysed subsidies of € 37 billion and an increased stamp prices since 1995 as an aid for excessive pension costs of civil servants. Applying its practice of testing whether the social security contributions borne by Deutsche Post were equivalent to those of its private competitors, the Commission concluded that Deutsche Post had effectively borne significantly lower social contributions than its private competitors for services which were open to competition (e.g. parcel services or retail banking). Therefore, the Commission ordered the recovery of the incompatible aid in the range of € 500 million to € 1 billion for the period from 2003 onwards.

The Commission’s state aid investigation included an analysis of costs reflected in prices for ‘regulated services’ approved by the NRA (BNetzA). The Commission has thus reviewed whether price regulation under German postal law conforms to EU state aid rules. In particular, the Commission analysed whether ‘burdens’ (or legacy costs) were allocated to ‘commercial services’ as well as to ‘regulated services’ in order to prevent that ‘commercial services’ benefit unduly from the allocation of burdens approved by the NRA

In May 2012, the German government evaluated the amount of the recovery on the basis of the Commission criteria and ended up with an amount of € 298 million, which was below the lower limit indicated by the Commission. The Commission decision has been appealed by the German government[143] and by Deutsche Post[144] for several reasons: among others, incorrect classification of public compensation as aid, improper treatment of the regulated charges imposed by the German regulator, incorrect benchmarking for the social security charges paid by private competitors, contradiction in the decision, and length of the procedure.

*United-Kingdom (2012)*[145]

In March 2012, the Commission reviewed an aid to be given to the Royal Mail Group to compensate the higher pension costs of Royal Mail. Applying its previous practice, the Commission allowed the aid provided that it ensured that the social security contributions borne by Royal Mail were equivalent to those of its private competitors.

**142** Decision of the Commission of 25 January 2012, OJ L289, 19 Oct 2012, p. 1.
**143** Action brought on 30 March 2012, T-143/12 *Germany v Commission*, OJ C165, 9 Jun 2012, p. 27.
**144** Action brought on 4 April 2012, Case T-152/12 *Deutsche Post v Commission*, OJ C165, 9 June 2012, p. 30
**145** Decision of the Commission of 21 March 2012, Case SA 31 479, *UK - Royal Mail,* OJ L279, 12 Oct 2012, p. 40.

#### 2.3.2.3 Other types of state aids

*France (2010)*[146]

In 2007, the Commission launched an in-depth investigation into the unlimited and free-of-charge state guarantee for the debt which France implicitly granted to La Poste due to its legal status. The guarantee was not confined to universal postal service activities but also covered La Poste's commercial activities, thus conferred an economic advantage over its competitors. The Commission concluded that the conversion of La Poste into a public limited company (*société anonyme*) by March 2010 removed the unlimited guarantee that it enjoyed and hence removed the incompatible state aid.

The Commission's decision was appealed by the French government and, in September 2012, the General Court upheld the decision of the Commission.[147] This judgment was appealed by the French government to the Court of Justice[148] and is currently pending.

Poland (2010)[149]

In November 2010, the Commission authorised the prolongation for 2011 and 2012 of a scheme of PLN 4.2m (at the time € 1.03m) to compensate the costs of two services which are exempted from postage fees for social and cultural reasons. The first service related to postage made by blind and partially sighted persons and libraries and associations under some conditions. The Commission exempted the aid under Article 107(2a) TFEU, i.e., aid having a social character, granted to individual consumers, without discrimination related to the origin of the products concerned. The second service related to items containing compulsory libraries copies. The Commission exempted the aid under Article 107(3d) TFEU, i.e., aid to promote culture and heritage conservation.

*United-Kingdom (2012)*[150]

In the March 2012 Royal Mail decision, the Commission also reviewed an aid amounting to a debt reduction of GBP 1 089 (at the time € 1 311 million) to finance a restructuring plan to be implemented between 2010 and 2015 for ensuring the sustained viability of Royal Mail. The plan included operational modernisation, the offset of the remaining pension deficit of the Royal Mail pension plan (which falls outside the legacy costs relief), and a structural reduction of mail centers. Royal Mail would finance 50 per cent of the restructuring costs through several measures, such as asset

**146** Decision of the Commission of 26 January 2010, Case C 56/07, *Garantie d'Etat illimitée - La Poste (F)*, OJ L274, 19 Oct 2010, p. 1.
**147** Case T-154/10, *France v. Commission [2012],* ECR II-____.
**148** Appeal brought on 5 December 2012 (Case C-559/12 P) by the French Republic against the judgment of the General Court delivered on 20 September 2012 in Case T-154/10 *France* v *Commission,* OJ C32, 2 Feb 2013, p. 13.
**149** Decision of the Commission of 4 November 2010, Case N 312/2010, *Prolongation of the scheme to compensate costs of services statutorily exempted from postage fees*.
**150** Decision of the Commission of 21 March 2012, Case SA 31 479, OJ L279, 12 Oct 2012, 40.

divestments. The plan also provided access to delivery network to other postal providers. Applying the Rescue and Restructuring Guidelines,[151] the Commission allowed the aid after a revision of the restructuring plan.

### 2.3.3 Conclusions on the application of competition rules to the postal sector

With regard to the application of antitrust rules (abuse of dominant position and anti-competitive agreement), several practices of the USPs have been identified which aim at impeding or slowing entry of new competitors on markets related to universal service or outside universal service. Two main practices emerged: granting of selective and discriminatory rebates to large customers and refusal to give access to non-replicable parts of the postal network. Replying to a question of the Danish Supreme Court, the Court of Justice of the European Union adopted the effects-based approach towards rebates as also advocated by the Commission in its 2009 Guidance Paper on exclusionary conduct of dominant position.

Rebating practices by USPs led to many (and much more than in the past) decisions by national competition authorities. This increase is probably explained by the increasing competitive landscape following the sector liberalisation. However, the Commission did not adopt any prohibition decision on abuse of dominant position, contrary to its previous practice. The relative deference of the Commission to the NCAs may partly be explained by the decentralisation of EU competition policy as a result of the modernization of EU competition law in 2004 and adoption of Regulation 1/2003.[152] We also note that the Commission condemned one cartel case in the freight forwarding markets, which involved some postal operators.

We believe the increased activity of NCAs in abuse cases, primarily with respect to rebates, reflect the fact that competition has intensified in the letter market. In some countries, alternative providers of end-to-end delivery compete with the incumbent. In many countries, consolidators put pressure on the incumbents' margins. And postal services altogether are increasingly competing with electronic alternatives (see section 3.2.2 below). In consequence, incumbents seek to protect revenues by price-discriminating between different groups of customers and competitors, and NCAs are faced increasingly with complaints from affected parties.

With regard to merger control, the Commission prohibited the takeover of TNT Express by UPS. The Commission concluded that in several Member States the merger would have reduced from three to two the number of players in the market for small package express deliveries within the EEA. This decision shows that given the economic and

**151** Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C244, 1 Oct 2004, p. 2.

**152** Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1, 4 Jan 2003, p. 1.

technological characteristics of the sector, many postal markets are oligopolistic and therefore face tight scrutiny by competition authorities. In the other notified merger case, the Asendia joint venture between the French and the Swiss incumbents, the Commission allowed the joint venture upon condition of the divestiture of the Swiss Post subsidiarity in France.

With the exception of UPS-TNT merger case (which we consider a seldom and unique development in this oligopolistic industry, exceeded in importance, perhaps, by the PTT Post/TNT merger in 1996 and the Deutsche Post/DHL merger in 2002, which were both approved) the level of activity on mergers and acquisition does not seem to have change substantially in the reporting period.

With regard to state aids control, the Commission adopted several decisions, two of which required recovery of part of the aid already given. When applying state aids rules, the Commission ensures a level playing field between incumbents (which were heavily subsidised in the past) and new entrants, a key requirement for the success of liberalisation, while guaranteeing the provision of services of general economic interest, which are pervasive in the postal sector. Most of the Commission decisions related to aid given to compensate the costs of SGEI. They were assessed according to the previous 2005 SGEI Framework and the current 2011 SGEI Framework, whose basic thrust is that the aid can only compensate the additional costs incurred by the SGEI provision and should give incentives to the incumbents to increase the efficiency and the quality of their services. In addition, several decisions involve aid given to compensate the USP for the higher-than-market legacy pension costs created due to the previous legal status of their employees as civil servants. Applying its constant practice, the Commission ensured that the social security contributions by the USPs are equivalent to those of new private entrants.

We have no indication to believe that the Commission's increased activity in controlling state aid has been affected by enhanced use of public support to postal operators. Alternative explanations of the increased activity may include greater attention given by the Commission to state aid generally or an increased importance of state aid now that postal markets are beginning to be more competitive.

## 2.4 Regulation of cross-border postal services

### 2.4.1 Overview of regulation of cross-border postal services

The Postal Directive establishes common rules for the provision of cross-border as well as domestic postal services. Article 3(7) of Postal Directive states that 'The universal service as defined in this Article shall cover both national and cross-border services'. In the Directive, the term 'cross-border' includes both (1) *intra-EU/EEA postal services* (i.e., between EU/EEA Member States) and (2) *extra-EU/EAA postal services* (i.e., between the EU/EEA Member States and the rest of the world). Under Article 13, Member States are obliged to ensure that prices for delivery of intra-EU/EEA universal services meet standards of cost-orientation, transparency, and non-discrimination. Article 18 prescribes quality standards for intra-EU/EEA cross-border services. Other articles of the Postal Directive also apply to cross-border services since they are not excluded. As noted above, Article 12, indent 5, requires USPs to refrain from discrimination 'as between third parties and universal service providers supplying equivalent services'.[153]

In addition to the Postal Directive, other EU measures substantially affect provision of cross-border postal services. These include EU customs regulations, EU competition rules, and EU trade agreements including the General Agreement on Trade in Services (GATS).

EU/EEA Member States also participate in a non-EU regulatory framework for cross-border postal services, the 'acts' of the Universal Postal Union (UPU), an intergovernmental organisation.[154] Acts of the UPU include the Universal Postal Convention, the Letter Post Regulations and the Parcel Post Regulations (collectively, the 'Regulations'), and related agreements.

The Universal Postal Convention is revised and readopted every four years by the Congress of the UPU, a general meeting of UPU member countries, virtually all countries in the world. The current version of the Universal Postal Convention was adopted in 2008 and is effective for the period 1 January 2010 to 31 December 2013. The next Convention, adopted in the UPU Congress held in Doha in 2012, will take effect on 1 January 2014 and continue for four years. Given the imminent succession of the 2008 Convention by the 2012 Convention, in this study we refer to the 2012 Convention and its Regulations unless otherwise indicated.

---

**153** Additional provisions of the Postal Directive that appear to apply to cross-border as well as domestic services include Article 4 (ensuring universal service); Article 5 (non-discrimination, permanence, and responsiveness of universal service); Article 6 (transparency of tariffs for universal services); Article 7 (financing of universal service); Article 9 (authorisation); Article 11a (access to postal infrastructure); Article 14 (accounts of USPs); Article 15 (financial accounts of USPs); Article 19 (user protection); Article 22 (role of the NRA); Article 22a (NRA right to information).

**154** For a description of the UPU and the role of the EU Member States in the UPU, see WIK-Consult and Campbell, *External Dimension* (2010), chap. 6.

After each Congress, the Regulations are adopted and periodically amended by the Postal Operations Council (POC), a committee of 40 public postal operators chosen by Congress.[155] The POC is dominated by 20 to 25 very large designated operators who collectively account for almost three-quarters of cross-border mail.[156] Many of these large designated operators actually or potentially compete against one another in the cross-border market.

EU law and UPU law obviously overlap to some degree. Both address standards for rates that public postal operators may charge each other for delivery of cross-border documents and parcels (called 'terminal dues'), the scope of the universal service obligation, quality of service standards, designation of USPs (called 'designated operators' in the UPU), customs and security procedures, and restraints on competition (see section 2.4.8, below). In addition to such policy issues, the acts of the UPU specify a wide array of technical and operations standards that are generally outside the ambit of EU law.

The acts of the UPU do not fit easily within the framework of EU law. A general principle of EU law is that institutions of the EU have *exclusive competence* to conduct negotiations with other nations if the negotiations deal with trade in services (under the Common Commercial Policy) or issues already covered by EU legislation (the 'AETR doctrine'). Where the EU has exclusive competence, Member States lack authority to negotiate individually. They must negotiate collectively as the EU or work collaboratively under the coordination of the EU. While this principle raises questions about the appropriateness of Member States' participation in the UPU and the application of UPU law to EU/EEA Member States, these issues were addressed in an earlier study and are not the primary focus of the current study.[157] Leaving aside potential conflict of laws issues, the current study concentrates on implementation of the Postal Directive and related provisions of the competition rules.

### 2.4.2 Authority of the NRA over cross-border postal services

To evaluate implementation of the Postal Directive with respect to cross-border services, we first asked Member States to identify the state authority responsible for regulation of cross-border postal services. Although Article 22 of the Postal Directive requires Member States to establish an independent regulatory authority that 'shall have as a particular task ensuring compliance with the obligations arising from this

**155** More precisely, UPU, 2012 General Regulations, Article 112(3) provides that 'Each member of the Postal Operations Council shall appoint its representative, who shall have responsibilities for delivering services mentioned in the Acts of the Union. The members of the Postal Operations Council shall take an active part in its work.' Thus, the 'member' of the POC is a member country of the UPU, but the representative must be the designated operator from that member country.

**156** WIK-Consult and Campbell, *External Dimension* (2010), pp. 114-16.

**157** See WIK-Consult and Campbell, *External Dimension* (2010), chap. 7, and sources cited there. See also, Damien Geradin, 'Legal Opinion on the Compatibility of the Proposed Target System for Terminal Dues with EU Law' (29 Apr 2012, unpub), pp. 22-30.

Directive', Member States may allocate regulatory tasks among more than one state authority.

Almost all Member States confirmed that the postal NRA is authorised by law to ensure compliance with obligations arising from the Postal Directive with respect to both intra-EU/EEA and extra-EU/EEA postal services. Alone among the Member States, the Dutch NRA reported that its authority was limited to intra-EU/EEA services.[158] Four Member States (CY, ES, UK, IS) did not identify which state authority is responsible for implementing the Directive to cross-border services.[159] Since Article 22 of the Directive specifically requires Member States to 'publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body' and to ensure that 'national regulatory authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Directive within the appropriate existing bodies', the failure of Member States to identify the state authority responsible for regulation of cross-border services suggests incomplete implementation of the Directive in this area. Moreover, according to statements by NRAs in interviews conducted for this study, application of the Directive to cross-border services is seen as difficult because many lack truly clear competence to regulate these services.

The question of who is in charge is closely related to the question of what law applies, EU or UPU? This proved to be a more difficult issue to illuminate. With respect to intra-EU/EEA services, only 12 Member States (BE, CZ, HU, IE, LT, LU, MT, PL, RO, SI, SK, NO) declared with reasonable clarity that they implement EU law in the event of a conflict with UPU law, and in 2 cases (HU, NO) the USP disagrees and asserts the primacy of UPU law.[160] In contrast, 7 Member States ( BG, DE, EE, EL, ES, IT, LV) state that UPU law limits the applicability of the Postal Directive and EU law in respect o intra-EU/EEA postal services.[161] Eleven Member States did not answer or confirmed their uncertainty. For example, the Swedish NRA observed, 'The question is undoubtedly complicated and involves in depth considerations of a complex legal nature and it is not possible to provide a short categorical answer to this question'. The French and Finnish NRAs pointed out that EU Member States file a declaration at the end of each UPU Congress stating that they 'will apply the Acts adopted by this Congress in accordance with their obligations pursuant to the Treaty establishing the European

**158** The Austrian NRA declared that its authority over cross-border services was limited to price regulation and transit time.

**159** Ministries and NRAs — each Member State decided for itself who should answer regulatory portions of the survey — were asked both whether they were responsible for cross-border postal services and, if not, which state agency had such responsibility. See Q112-1 and Q112-2.

**160** Except in the case of the competition rules and, for the Hungarian USP, the customs law.

**161** Four Member States (BG, DE, ES, IT) accept that EU competition and customs law must be given priority whereas Greece concedes primacy only for EU customs law. Of course, intra-EU/EEA postal services are not normally subject to customs procedures.

Union'. They do not, however, indicate how this declaration affects implementation of the Postal Directive.[162]

Member States adopt similar positions with respect to the role of the acts of the UPU in regulation of extra-EU postal services with two exceptions. With regard to extra-EU postal services, the Polish NRA recognises the primacy of UPU law except in matters covered by EU customs and competition rules, and the Norwegian NRA offered no answer.

In sum, more than half of EU/EEA Member States either take the position that the Postal Directive cannot be applied to cross-border postal services if it is contrary to the acts of the UPU (although they may apply the EU competition rules or EU customs laws) or they are uncertain about the matter. Put another way, only 10 Member States (BE, CZ, HU, IE, LT, LU, MT, RO, SI, SK), accounting for less than 10 per cent of outbound EU/EEA cross-border letter post items, authorise the NRA to implement the Postal Directive with respect to all cross-border postal services and unambiguously recognise the NRA's obligation to do so.

### 2.4.3 Terminal dues in intra-EU/EEA cross-border postal services

Article 13 of the Postal Directive requires Member States 'to ensure the cross-border provision of universal service' by 'encouraging' their USPs to follow certain principles in agreements on terminal dues for intra-EU/EEA postal services. In the Postal Directive, the term 'terminal dues' refers to charges for the delivery of both letter post items and parcel post items, a practice followed in this report unless otherwise noted.[163] Specifically, Article 13 states in full:

> 1. In order to ensure the cross-border provision of the universal service, Member States shall encourage their universal service providers to arrange that in their agreements on terminal dues for intra-Community cross-border mail, the following principles are respected:
>
> — terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,
>
> — levels of remuneration shall be related to the quality of service achieved,

**162** The development and details of this declaration by EU (and the other EEA) Member States is described in the 2010 *External Dimension* study. That study concluded that the legal status of this common declaration under international law is questionable. See WIK-Consult and Campbell, *External Dimension* (2010), pp. 147-53, 172-74.

**163** Postal Directive, Article 2(15) defines 'terminal dues' as 'the remuneration of universal service providers for the distribution of incoming cross-border mail comprising postal items from another Member State or from a third country'. Thus, in the Postal Directive the term 'terminal dues' refers to charges for delivery of both letter post items and parcels, whereas in the UPU Convention the term '*terminal dues*' refers only to charges for the delivery of letter post items and the term '*inward land rates*' refers to charges for the delivery of parcels.

— terminal dues shall be transparent and non-discriminatory.

2. The implementation of these principles may include transitional arrangements designed to avoid undue disruption on postal markets or unfavourable implications for economic operators provided there is agreement between the operators of origin and receipt; such arrangements shall, however, be restricted to the minimum required to achieve these objectives.

Despite the discretionary word 'encourage' in the first sentence of Article 13, the gist of this article seems to be that EU/EEA Member States are *obliged* to ensure that USPs implement the pricing principles of the Postal Directive when charging each other for delivery of postal items in the intra-EU/EEA universal service *after* transitional arrangements have expired.[164] While the first sentence uses the word 'encourage', section (2) makes clear that any transitional period must be kept to '*the minimum*' *required* to avoid undue disruption on postal markets or unfavourable implications for economic operators. Moreover, it is apparent that the larger goal of full market opening applies to intra-EU/EEA postal services as well as national postal services. More than a decade and half after adoption of Article 13 in the original Postal Directive, the transitional period must be deemed to have lapsed.

For purposes of this study, therefore, we consider that Article 13 requires prices for the delivery of inbound intra-EU/EEA postal items in the universal service that are cost-oriented, quality-related, non-discriminatory, and transparent. In our survey, 16 Member States (CZ, DK, EE, EL, HU, IT, LT, LU, LV, PT, RO, SE, SI, SK, IS, NO) stated that charges for inbound postal items received from other Member States are cost-oriented. Seventeen Member States (BE, CZ, DK, EE, EL, HU, IT, LT, LU, LV, PT, RO, SE, SI, SK, IS, NO) declared that such charges are related to the quality of service. Only 3 Member States (EL, HU, LV) asserted that charges for the delivery of intra-EU/EEA cross-border items were transparent.[165]

Answers relating to questions of price discrimination, however, cast doubt upon these affirmative answers. Twenty Member States declined to attest that charges for delivery for inbound postal items are aligned with domestic postage charges for delivery of similar items received in bulk. The same 20 Member States also declined to assert that their USPs charge similar terminal dues for delivery of similar items received from different Member States.[166] Where USPs charge significantly different rates for delivery

**164** Only the 2 Member States (EL, PT) provided for transitional arrangements pursuant to Article 13(2). Neither NRA provided a clear description of the transitional mechanism; the Greek NRA reported that the transition ended in 2008.

**165** Source: WIK Survey.

**166** AT, BE, BG, CY, DE, DK, ES, FI, FR, IE, LT, LU, MT, NL, PL, PT, SE, UK, LI, NO. While the NRA of Luxembourg asserted that its USP did not discriminate in charges for delivery of items received from different Member States, it also reported that its USP used 3 different terminal dues regimes to set the charges.

of similar postal items depending on the Member State of the mailer, it is difficult to understand how such rates can all be cost-oriented.

On the hand, 10 Member States (CZ, EE, EL, HU, IT, LV, RO, SI, SK, IS) maintain that charges for delivery of inbound intra-EU/EEA postal items were neither (1) discriminatory compared to domestic rates nor (2) discriminatory between Member States. Four of these Member States (CZ, EE, EL SI) report that all intra-EU/EEA terminal dues are based on either the Reims agreement (described below) or bilateral terminal dues agreements. The other 6 Member States (and 21 Member States overall) report that their USPs charge UPU terminal dues for delivery of at least some intra-EU/EEA postal items. Since it is known that UPU terminal dues rates are not cost-oriented, it appears clear that, at least for these 21 Member States, some terminal dues charged for delivery of intra-EU/EEA postal items are not oriented to the costs of the destination postal operator.[167]

The Reims agreement is a terminal dues agreement among European public postal operators. The Reims agreement followed a Commission examination of intra-EU terminal dues under the competition rules, not the Postal Directive. In 1999, the Commission found the Reims II agreement to be a price-fixing agreement under EU competition rules but held that it was nonetheless acceptable in light of certain public benefits, primarily that Reims terminal dues were more cost-oriented than UPU terminal dues.[168] A revised Reims II agreement was approved by the Commission in 2003.[169] Subsequently, versions III, IV, and V have been agreed by different sets of USPs, but there has been no public information about the content of these agreements because in 2004 the Commission stopped the practice of reviewing such agreements for qualification under the public benefits exception to the competition rules.[170] Currently, it is believed that the USPs of all countries in the present survey are parties to the current Reims V agreement except for the USPs of Bulgaria, Romania, and Iceland. However, the Reims V agreement is not necessarily used for all bilateral exchanges among these USPs (in 2009, an earlier version of Reims applied to only 30 per cent of the bilateral mail of Reims participants). There is no available information on which bilateral exchanges are controlled by Reims V nor on the terms and conditions of remuneration.

**167** In their answers to these questions, 16 USPs (CY, CZ, DE, EE, EL, ES, FI, HU, IE, IT, LU, NL, PT, RO, SI, SK) also affirm that there was no discrimination (A) between charges for delivery of inbound intra-EU/EEA postal items and domestic mailers or (B) between charges for postal items received from different Member States. Yet 11 of the 15 USPs apply UPU terminal dues which are neither cost-based nor aligned with domestic postage (and hence discriminatory with respect to domestic mailers) and 14 USPs (the exception is EL) report multiple terminal dues regimes to the delivery of inbound mail received from different Member States (and hence discriminatory between Member States)

**168** Commission Decision 1999/695/EC - REIMS II - 15 September 1999 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement, OJ L 275, 26 Oct 1999, p. 17.

**169** Commission Decision of 23 October 2003, Case 38.170 REIMS II renotification, OJ L56, 24 Feb 2004, p. 76.

**170** Regulation 1/2003, which became effective 1 May 2004, made Article 101(3) TFEU 'directly effective', eliminating the prior practice of applying for a 'negative clearance' from competition authorities. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1, 4 Jan 2003, p. 1

Hence, since Reims V rates are non-transparent, it is impossible to verify the extent to which Reims V terminal dues are cost-oriented and non-discriminatory.

Bilateral terminal dues agreements are also established by UPS for the exchange of mail between specific pairs of Member States. These agreements are likewise non-public. According to anecdotal evidence, it appears that UPU terminal dues rates affect these bilateral agreements because UPU rates are regarded as a legally established default rate. That is, in bilateral terminal dues negotiations, some USPs maintain that the destination USP is obliged by the Universal Postal Convention to deliver intra-EU/EEA postal items at UPU terminal dues rates in the absence of an alternative agreement (bilateral or Reims). To the extent that this argument is accepted, it creates obvious difficulties for a USP in a high-cost Member State seeking to charge terminal dues that are aligned with its (much higher) domestic postage. The originating USP has no incentive to agree to cost-oriented terminal dues charges if it can insist upon delivery by the destination USP at below-cost UPU terminal dues rates.

In our survey we asked Member States whether they considered UPU terminal dues rates to be the default rate that their USP must charge for delivery of intra-EU/EEA postal items in the absence of an alternative agreement. Only 6 Member States (BE, EL, HU, LU, LV, RO) were able or willing to answer this question. Three Member States (HU, LU, LV), declared that the UPU rates were the default rate, while 2 Member States (IT, RO) maintained that the Reims rates is the default. Only the Belgian NRA referred the Postal Directive, 'The rates should respect the general tariffs principles as set out by the Directive.' For their part, 7 USPs (DE, ES, FI, HU, LT, PT, IS) maintained that UPU rates were the default charges.

The answer of the Belgian NRA implies that establishing legal default terminal dues rates that are not cost-oriented or aligned with domestic postage rates may be considered incompatible with the principles set out in Articles 5 (non-discrimination) and 13 (intra-EU terminal dues) of the Postal Directive. In addition, to give USPs from other Member States a legal right to delivery rates that are not available to private postal operators may be tantamount to granting a 'special right' in violation of Article 7(1) of the Directive.[171] The non-answers of most Member States is hardly persuasive evidence that they are implementing the Directive in this respect.

In sum, no Member State has affirmed with credibility that it is fully implementing Article 13 in respect to cross-border postal services. Failure to ensure transparency of

**171** If the UPU Convention gives the USP in Member State A a legal right to access the delivery services of the USP in Member State B at rates (terminal dues) which are substantially below the rates that the USP in Member State B charges other postal operators from Member State A, then it appears that the legal measure giving the USP in Member State A discounted access could be considered a 'special right' as defined in the electric communications directives. That is, a right to preferential access rates 'confers on undertakings, otherwise than according to [objective, proportional and non-discriminatory] criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same . . . service'. See section 2.2.1, above.

terminal dues arrangements is undeniable. Moreover, it appears obvious that there is significant level of discrimination (A) between delivery charges for inbound intra-EU/EEA cross-border postal items and similar domestic postal items and (B) between delivery charges for inbound intra-EU/EEA cross-border postal items received from different Member States. It also appears probable that some Member States are doing better than others to eliminate such discrimination. However, given the opacity of terminal dues rates in cross-border postal services, it is not possible to evaluate the performance of individual Member States with confidence.

### 2.4.4 Terminal dues in postal services between the EU/EEA and other industrialised countries

Terminal dues charged for delivery of universal service items received from countries *outside* the EU/EEA area appear to be covered by the general requirements of Articles 5 and 12 of the Postal Directive. Clearly, the term *universal service* explicitly includes cross-border services between the EU/EEA and other countries.[172] Article 5 of the Postal Directive requires that universal services shall provide ‘an identical service to users under comparable conditions’. The term ‘user’ is defined broadly to mean ‘any natural or legal person benefiting from postal service’.[173] Certainly ‘users’ include foreign public postal operators, foreign private postal operators, and foreign mailers. As a general rule, the universal service should therefore provide ‘an identical service . . . under comparable conditions’ to foreign as well as EU/EEA users.

Article 12 requires that ‘[Ta]riffs for each of the services forming part of the universal service [shall] comply with the following principles: . . .’

> — [indent 4] tariffs shall be transparent and non-discriminatory
>
> — [indent 5] whenever universal service providers apply special tariffs . . . they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and *as between third parties and universal service providers supplying equivalent services*.[174]

Whether or not Article 12 applies to terminal dues depends upon whether a ‘terminal dues’ rate can be considered a ‘tariff’ as that term is used in Article 12. The term ‘tariff’ is undefined in the Postal Directive. However, the term ‘terminal dues’ is defined as ’the remuneration of universal service providers for the distribution of incoming cross-border

**172** Postal Directive, Article 3(7) (‘The universal service as defined in this Article shall cover both national and cross-border services’); Article 2(11) (‘cross-border mail: mail from or to another Member State or from or to a third country’).
**173** Postal Directive, Article 2(17).
**174** Postal Directive, Article 12, fourth and fifth indents (emphasis added).

mail comprising postal items from another Member State or from a third country'.[175] It is apparent that the term 'special tariff' in Article 12 refers to 'remuneration of a universal postal operator' for distribution of items received from, inter alia, other 'universal postal operators' because Article 12, indent 5, specifically prohibits discrimination 'as between third parties and universal service providers'. Since virtually no Member State has more than one USP, a special tariff charged by a USP to other universal service providers arises only in the case of incoming cross-border mail. This is, by definition, a terminal dues rate. Hence, it seems that a terminal dues rate may be considered a special type of special tariff, i.e., one that applies to delivery of inbound cross-border postal items tendered in bulk. By the same token, Article 13 may be regarded as, in effect, a special case of the principles set out in Article 12. Article 13 emphasises the need to apply the principles of Article 12 to intra-EU cross-border mail — an especially important component of the EU postal sector — while at the same time allowing a transition period for implementation. This perceived kinship between Articles 12 and 13 is hardly surprising. The principles in Articles 12 and 13 are almost identical.

According to a close reading of the Postal Directive, therefore, it appears that the principles of Article 5 and 12 could be deemed to apply to the terminal dues which EU USPs charge for delivery of postal items received from countries outside the EU/EEA area. Of course, the Postal Directive does not apply to the postage rates that foreign postal operators charge their customers for sending postal items to the EU.

Historically, however, Member State USPs have delivered inbound mail received from non-EU/EEA countries at UPU terminal dues rates, which are not consistent with the Postal Directive.[176] While details of the UPU terminal dues rules are complex, in broad terms, the 2012 UPU Convention establishes three schedules of charges for delivery of postal items, as follows:[177]

- *Target system terminal dues*. Charges for delivery of letter post items (including small packets weighing up to 2 kg) which are both sent by and delivered by USPs in *industrialised countries* and which are based on mail volume and weight.

- *Transitional system terminal dues*. Charges for delivery of letter post items (including small packets weighing up to 2 kg) which either are sent by or delivered by USPs in *developing countries* and which are based on weight alone.

- *Inward land rates*. Charges for delivery of parcel post items based on a percentage (set by the UPU's Postal Operations Council) of each postal

**175** Postal Directive, Article 2(15).
**176** The only non EU/EEA USPs who are parties to Reims V are the USPs of Switzerland and the Vatican.
**177** See WIK-Consult and Campbell, *External Dimension* (2010), pp. 120-37 for more detailed description of UPU terminal dues.

operator's 2004 charge for the delivery of inbound parcel post and subject to floor rate that is based on volume and weight.

None of these UPU charges are cost-oriented or aligned with the domestic postage rates of EU/EEA member countries (unless by coincidence). All EU/EEA Member States are classified by the UPU as industrialised countries in the 'target system' except Bulgaria (BG), Latvia (LV), Lithuania (LT), and Romania (RO).

In the present study, we asked NRAs and/or ministries of the Member States whether terminal dues charged for delivery of letter post items received from non-EU/EEA *industrialised countries*[178] were cost-based, transparent, and non-discriminatory with respect to domestic mailers. We also asked what terminal dues regimes were applied to this inbound mail. Except for the possibility of a few bilateral terminal dues agreements and a Reims-based relationship with Swiss Post, the answers to these questions should have been straightforward because the terminal dues rates are set by the UPU. Therefore, for all Member States, answers to our questions were (1) terminal dues are not cost-based, (2) terminal dues are transparent, and (C) terminal dues are discriminatory with respect to national mailers (i.e. domestic mailers in Member States whose rates are cost-oriented). Essentially only two terminal regimes are applicable. For letter post items received from industrialised countries outside the EU/EEA area, all EU/EEA USPs charge UPU *target system* rates except for the 4 EU Member States in the UPU transitional system (BG, LT, LV, RO) which charge UPU *transitional system* rates.

Despite the relative simplicity of this system, few Member States were able or willing to answer these questions. Eight Member States stated that terminal dues charged non-EU/EEA countries were not cost-oriented; 3 Member States stated they were not aligned with domestic postage. On the other hand, 6 Member States (EL, HU, IT, LT, LV, SI) asserted that terminal dues charged for delivery of letter post items received from industrialised countries outside the EU/EEA are cost-based, transparent, and non-discriminatory with respect to domestic mailers. However, since UPU rates are known — and known to be poorly aligned with domestic postage in most industrialised countries — it is not credible to maintain these rates are cost-based or non-discriminatory. (In only 2 of these 6 Member States did the USP identify the same terminal dues regimes as the NRA/ministry).

In sum, it appears that Member States have not sought to apply the principles of the Postal Directive to charges for inbound postal items received from non-EU/EEA

178 We have focused only on postal items received from *industrialised countries* outside the EU/EEA area. While considerations of foreign policy or affordability may justify a departure from the standards of cost-orientation and non-discrimination when setting charges for delivery of postal items received from developing countries, there is no apparent public policy that justifies setting delivery charges that discriminate for or against postal items in the universal service that are received from other industrialised countries.

industrialised countries. Indeed, NRAs in most Member States do not seem to have a complete understanding of terminal dues arrangements.

### 2.4.5 Distortions created by UPU terminal dues

Since UPU terminal dues are not based on costs and unrelated to domestic postage rates, it is intuitively apparent that UPU terminal dues create economic distortions. However, it is not easy to specify precisely what the distortions are or to quantify their effects. The main obstacle to evaluating the effects of terminal dues is the fact that terminal dues do not correspond to an actual market price because terminal dues are not available to all willing buyers. If postal administration X offers to deliver a letter for € 0.40, and this offer is available to the general public, then € 0.40 is the actual cost of delivery for the buyer. Suppose, however, that postal administration X offers to deliver a letter for € 0.40, and this offer is available only to postal administration Y and only on condition that Y also delivers a letter for X for a charge of € 0.40. Then what is the cost to postal administration Y of having its letter delivered by X? Does postal administration Y or postal administration X benefit more in the exchange? Does it make any difference at what level the terminal dues rate is set? What are the effects on mailers? On competitors?[179]

What is clear is that the way to eliminate distortions in cross-border letter post markets would be for each USP to pay other USPs the domestic postage that would be charged for delivery of similar letter post items. Therefore, in principle it is possible to estimate the distortions created by UPU terminal dues by comparing the terminal dues that are set by the UPU Convention with the domestic postage that would be charged on the same volume of similar mail. In practice, developing a mathematical model to estimate these distortions requires several simplifying assumptions to overcome lack of data. In analysing the distortions implied by the UPU terminal dues system, the principal assumptions we have made are the following:

- *Domestic postage for inbound international letter post items*. The comparable domestic postage rate in the destination country is not the full retail rate but a rate that reflects the cost of delivery only. In an industrialised country, a 'delivery-only' postage rate is roughly 60 to 80 per cent of the full retail rate. We have used 70 per cent.

- *Distribution of letter post across weight steps and shapes*. In order to calculate the domestic postage of a hypothetical 'average letter post item', it is necessary to know the number and average weight of items in each weight step and shape category (letter, flat, packet). We have assumed that all cross-border letter post

**179** See WIK-Consult and Campbell, *External Dimension* (2010), pp. 127-30 for a specific example of how terminal dues that are not aligned with cost-based domestic postage rates create distortions in bilateral relations between postal operators.

flows are similar to an average mail profile developed by the UPU in a 2011 study.

- *Bilateral mail flows*. Total estimated letter post volumes were allocated to different destination countries using OECD data for trade in services as a distribution key. The resulting bilateral flows were then adjusted so that the implied inbound totals agreed approximately with reported inbound letter post volumes.

- *Future postal volumes and rates.* We have assumed that the volume of cross-border letters (small envelopes) will decline by 4 per cent per year from 2013 to 2017 (the life of the next UPU Convention); that the volume of flats (large envelopes) will decline by 5 per cent per year; that the volume of small packets will increase by 4 per cent per year; and that domestic postage rates will increase by 3 per cent per year.

For simplicity, we have limited our calculations to the letter post items exchanged between the 24 most industrialised countries, what the UPU calls ‘Group 1.1’. Group 1.1 includes 17 EU/EEA Member States (AT, BE, DE, DK, FI, FR, EI, ES, IE, IT, LU, NL, PT, SE, UK, NO, IS) and 7 additional countries: Australia (AU), Canada (CA), Israel (IL), Japan (JP), New Zealand (NZ), Switzerland (CH), United States (US). These 24 countries account for about three-quarters of all cross-border mail worldwide.

It must be emphasised the model does not reflect that actual flows and actual gains or losses result from using UPU terminal dues. The assumptions underlying the model are necessarily rough estimates only. Moreover, in many bilateral mail flows, the terminal dues charged are not UPU terminal dues but terminal dues that result from bilateral agreements or multilateral agreements such as Reims V; however, UPU terminal dues rates affect the negotiation of alternative rates. What the model offers, therefore, is an insight into direction and influence of the UPU terminal dues system.

Given these assumptions, Figure 2-8 shows the discrepancy between the UPU terminal dues charges and the equivalent domestic postage charges. The right (green) bar shows the domestic postage that would be charged for a typical letter post item weighing 85 grams in 2014. The blue (left) bar shows the UPU ‘target system’ terminal dues charge. The middle (red) bar shows the UPU terminal dues charge without the cap and floor provisions that effectively render the UPU charge a flat rate.

Figure 2-8 Domestic postage v. UPU terminal dues for average letter post item, 2014

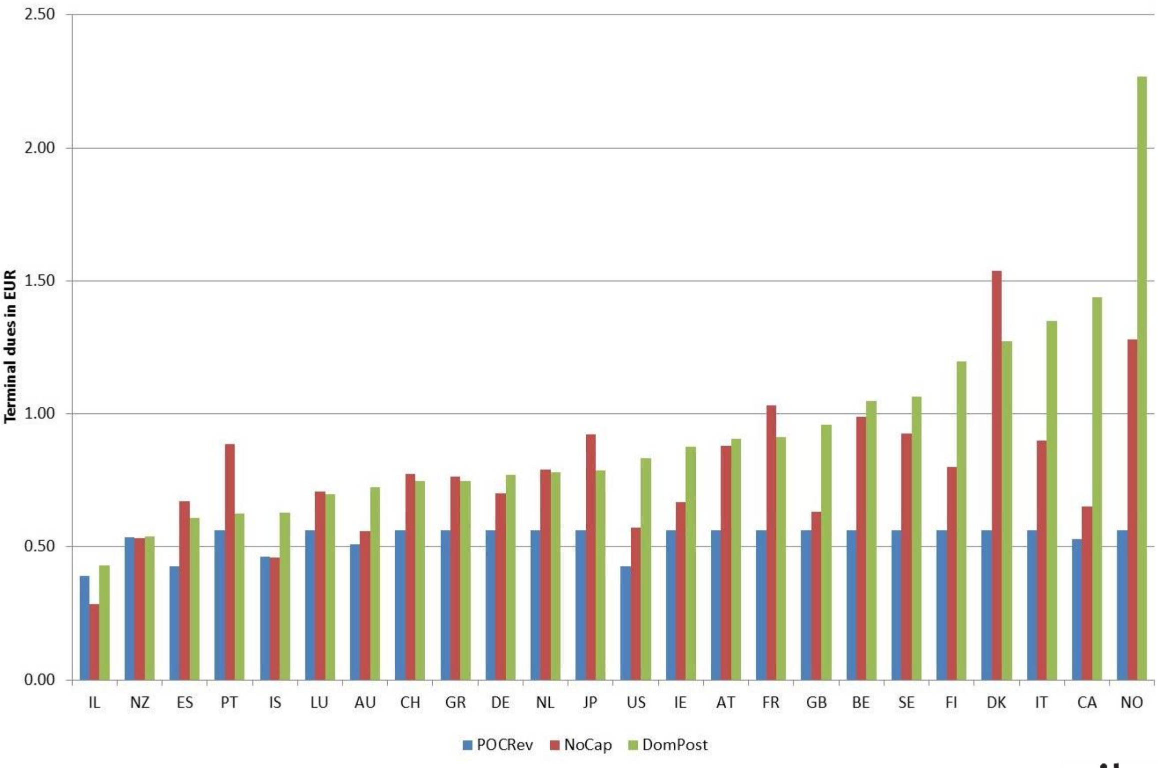


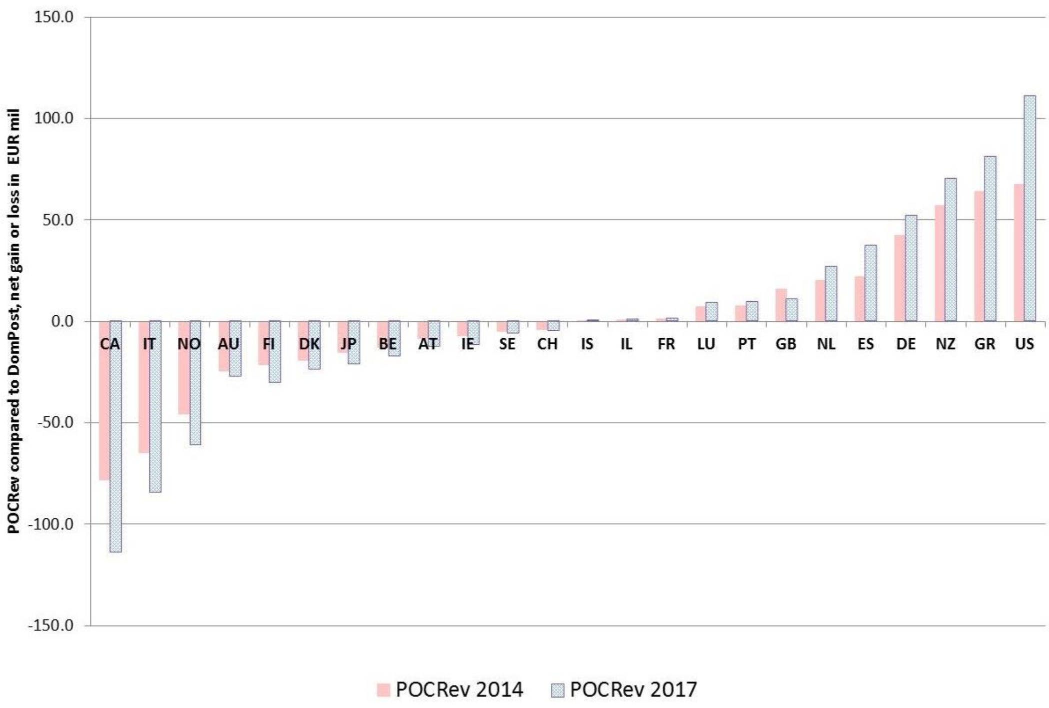

Table 2-19 shows the overall effect of applying UPU terminal dues to the exchange of letter post items among the 24 Group 1.1 countries. This table suggests that the discounts for letter post items translate into a weighted average of 37 per cent and do not become better aligned with domestic postage over the course of the next UPU Convention. The discount for small packets, an especially important component of the letter post for the future, is even greater, about 50 percent. Overall, the value of the market, measured by the domestic postage that should be charged is about € 2.3 billion. The total distortions that would be introduced by UPU terminal dues (i.e. the sum of all differences in payments caused by terminal dues, compared to domestic prices) is about one-third the value of the market. Although some of these distortions cancel out for each country, the net transfer of wealth from countries that have a net gain to countries that have a net loss is about € 300 to € 400 million per year.

Table 2-19 Effects of UPU terminal dues on exchanges among Group 1.1

| | 2014 | 2017 |
|---|---|---|
| Average discount from domestic postage for letter post | -37% | -37% |
| Average discount from domestic postage for small packets only | -50% | -49% |
| Total domestic postage charge for letter post (mil. euros) | 2,333 | 2,962 |
| Total UPU terminal dues charge for letter post (mil. euros) | 1,465 | 1,872 |
| Total distortion in market (mil. euros) | 868 | 1,090 |
| Total wealth transfer from losers to winners (mil. euros) | 308 | 413 |

Figure 2-9 offers an approximate indication of the net gainers and net losers that would result from applying the UPU terminal dues to all industrialised countries in 2014 and 2017. In general, the gainers are low cost countries that export more mail than they import, and the losers are high cost that import more mail than they export. While only approximate, this figure shows clearly that the effect of the UPU terminal dues is to benefit some USPs at the expense of others even if the actual results are ameliorated to some degree by alternative terminal dues agreements.

Figure 2-9 Gainers and losers due to UPU terminal dues



### 2.4.6 UPU measures relating to bypass competition

The fact that public postal operators do not apply similar charges for delivery of similar inbound cross-border postal items has stimulated a demand among mailers who wish to bypass the traditional international postal system and take advantage of lower delivery rates where possible. If the public postal operator in country A charges less for the delivery of postal items received from country X than for delivery of similar items from country Y, then an international company might send its cross-border mail to A from X rather than from Y. If the public postal operator in country A charges less for the delivery of inbound cross-border postal items than it charges for the delivery of similar domestic items, then a domestic mailer might produce its mail in a neighbouring country and post the items back into country A as cross-border mail.

Some commercially-minded public postal operators have sought to meet this demand for bypass options by expanding operations beyond their national markets. One way to do so is to team up with private postal operators to offer remail services. 'Remail' is mail that originates in one country but is posted in a second country, generally for forwarding to a third country. Another possibility is that a public postal operator may open offices outside of its national territory and compete directly with the local public postal operator for outbound international postal items. Such an office is called an 'extraterritorial office of exchange' or ETOE.

Senior postal officials have not welcomed competition that allows a sender of cross-border mail to bypass the regular outbound cross-border services of his national designated operator. The response to remail competition began with a meeting called by the British Post Office in 1987. The Chairman of the British Post Office explained that remail operations were took advantage of terminal dues that were not aligned with costs (and made use of more efficient transportation networks).[180] Commission staff later summarised the objective of the postal officials at this meeting as 'concerted action which would protect their commercial position, limit competition between them, and put remailers at a disadvantage.'[181] This 'Remail Conference' (as the participants called it) led directly to a series of competition law investigations by the Commission which resulted in the Reims agreements.[182]

---

**180** At the opening of the Remail Conference, Sir Ronald Dearing, Chairman of the British Post Office, declared, 'Remailing firms are now seeking systematically to exploit the availability of cheaper rates in some countries, and the limitations of the present systems of imbalance charges [terminal dues], and they will take whatever profitable traffic they can acquire, be it printed papers or much more significantly, airmail. They have efficient transportation networks, originally established for parcel and bulk consignment distribution, and they are now using their network strength to very good effect in establishing posting facilities throughout the world.' Quoted in James I. Campbell Jr., 'The Evolution of Terminal Dues and Remail Provisions in European and International Postal Law' in *The Liberalization of Postal Services in Europe*, ed. Damien Geradin (2002), chap. 1, p. 15.

**181** European Commission, Statement of Objections, Case IV32.791 – Remail (5 Apr 1993), pp. 10-11.

**182** James I. Campbell Jr., 'The Evolution of Terminal Dues' (2002).

Under legal pressure from the Commission, postal officials moved their negotiations to the UPU. Under the heading 'strengthening the provisions of the Convention aimed at preventing remailing', the UPU Executive Committee reported, 'The Post is competitive. In many countries the greater part of postal revenues is derived from services operated in free competition with private companies. It is however difficult to tolerate the unfair competition presented by remailing.'[183] The 1989 UPU Congress approved the key proposals of Executive Committee relating to remail: higher terminal dues for the exchange of mail between industrialised countries and emphasis on implementation of a UPU provision which allowed public postal operators to refuse for forward or deliver remail.

Although these elements of the UPU Convention have been modified in subsequent Congresses of the UPU, the object and effect of these provisions and the policies of the UPU towards remail have not changed. As recently as the 2008 Congress, the Netherlands and United States successfully amended another provision of the Convention to ensure that parcel postal services

> would not permit the misuse of parcel post for sending letter-post items addressed to multiple addressees for local distribution, *thereby preserving the existing prohibition against inclusion of current and personal correspondence in parcels when performed for the purpose of conducting remail activities.*'[184]

The UPU position on ETOEs was first adopted by the 2004 Bucharest Congress. The Bucharest Congress resolved a debate within the UPU that began in 2001. In 2003, a working party of the Council of Administration summarised the arguments for and against accepting mail from ETOEs on the same terms as from the 'designated operator' (i.e., the public postal operator) in the country where mail originated. The arguments in favour allowing competition from ETOEs was put by UK:

> Great Britain was of the view that, *given the evolution of the market, particularly the varying degrees of postal liberalization in different UPU member countries, dispatches from ETOEs should be given the same treatment as mail from postal administrations, i.e. no discrimination*. . . . The draft resolution proposed that terminal dues remuneration and QSF [Quality of Service Fund] payments should not be less than those provided for in the UPU Convention. *Switzerland and the Netherlands felt that the country of destination had no reason to complain as long as it received the same terminal dues as from the postal administration of the country hosting the ETOE, which was the case when ICs established ETOEs in other ICs*. If the

**183** UPU, 1989 Washington Congress, Doc. 56. The chairman of the Executive Committee was a representative of the German postal administration.

**184** UPU, 2008 Geneva Congress, Prop. 20.15.3.Rev 1 (18 Jun 2008) (emphasis added), amending Article 15(5) of the 2008 Universal Postal Convention.

> access price in the terminal dues system was right, Switzerland felt that ETOEs would not be a problem.

Canada presented the arguments against allowing competition from ETOEs:

> Canada had presented a draft resolution at the Group's February 2003 meeting. Under this resolution, . . . *dispatches from ETOEs would be treated on the same footing as shipments from private operators*. Canada, India and the USA felt that there was a need to clarify whether ETOE activities are commercial or governmental. In their view, *ETOEs, which do not have any universal service obligation, should be treated like private operators*. In the USA, the ETOEs used to be private companies that have been bought by foreign postal administrations. *These have advantages (e.g. UPU documentation, customs procedures for mail under the UPU Acts and the possibility of choosing between UPU terminal dues rates and the domestic postage tariff for direct access)* so as to have the best of both worlds. If UPU rules are made applicable to ETOEs, they should be made so for all players. *The UPU rules are advantageous not only on the terminal dues remuneration side, but also as regards documentation, customs procedures and payment periods*. Canada expressed some concern about opening up the UPU to players not previously regulated by the UPU. Moreover, *the UPU is based on reciprocity in the form of bilateral exchanges, not on one-way traffic. Loss on incoming mail is often compensated by profit on outgoing mail, which will disappear if competitors take away that traffic. The current structure of the UPU should not be jeopardized.*[185]

In the 2004 Bucharest Congress, there were competing proposals regarding ETOEs. A proposal by Belgium, Germany, Netherlands, Sweden, Switzerland would allow each UPU member country to decide for itself whether to allow ETOE competition with its designated operator. According to this proposal, the designated operator in the destination country would then be obliged give non-discriminatory treatment to all postal items received from a country accepting ETOEs. An opposing proposal was offered by Canada, Japan, Spain, and the United States. It would treat ETOEs as treated like private operators in most circumstances.[186] According this proposal, therefore, the designated operator in the destination country could discriminate against mail received from ETOEs even from countries which allowed ETOE competition. This proposal was based on the 2003 Canadian position noted above.

**185** UPU, Management of the Work of the Union Project Team, CA EP GTU 2003.2, Doc 4a ('Extraterritorial Offices of Exchange (ETOEs)'), p. 2.

**186** UPU, 2004 Bucharest Congress, Proposal 48. This proposal was supported by Aruba, Bahamas, Barbados, Brazil, Grenada, Guyana, Honduras (Rep.), Jamaica, Mexico, Portugal, Saint Christopher (St. Kitts) and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

Supporters of the 'national choice' proposal (including DK and New Zealand) took the position that:

> ETOEs made it possible to improve the quality of service to customers and remain competitive with private operators. In addition, they considered that ETOEs were adapted to the market trend towards liberalization of the postal sector. In the final analysis, it was up to the country itself and not the UPU to decide whether it accepted ETOEs on its territory or not.[187]

In support of the opposing 'private operator' proposal, Canada emphasised that ETOEs were a source of arbitrage and noted that ETOEs did not offer reciprocity and were not bound to provide the mandatory universal service, which represented a risk for the UPU network.[188] Other supporters of this position (including Saudi Arabia, Botswana, South Africa, Nepal, Portugal, Cuba, Mauritius, Spain, China, Viet Nam, and Malaysia) took the following position:

> Their main arguments were that the ETOEs had no obligation with regard to provision of the mandatory universal service and that they did not necessarily pay terminal dues. Furthermore, in their view, ETOE items could be regarded as commercial items.[189]

The Bucharest Congress rejected the 'national choice' option by a vote 31 for, 96 against. The contrary 'private operator' proposal was adopted by a vote of 95 for, 28 against.

In sum, current UPU measures relating to bypass competition from remail or ETOEs include the following measures:[190]

- *Creation of a class of 'designated operators'*. Under the Universal Postal Convention, each UPU member country is obliged to nominate one or more 'designated operators' who are 'designated to operate postal services and to fulfil the obligations arising from the Acts of the Union on their territory' and thus benefit from special rights (and corresponding obligations) conferred in the Convention.[191]

**187** UPU, 2004 Bucharest Congress, C3-Rapp 4, p. 2 (23 Sep 2004).
**188** UPU, 2004 Bucharest Congress, C3-Rapp 2, p. 2 (20 Sep 2004).
**189** UPU, 2004 Bucharest Congress, C3-Rapp 4, p. 2 (23 Sep 2004).
**190** This paragraph provides only a short and simplified summary of these UPU measures. For a more explicit and detailed explanation, see WIK-Consult and Campbell, *External Dimension* (2010), pp. 137-45.
**191** UPU Convention 2012, Art. 2; UPU Convention 2008, Art. 2.

- *Anti-remail provision*. An article in the Convention that authorises a designated operator to surcharge remail or to refuse to deliver remail (or forward it to a third country) under specified circumstances.[192]

- *Limits on establishment of ETOEs*. A UPU resolution that requires a member country to positively approve establishment of an ETOE on its territory and to deny an ETOE the right to operate with the privileges of a UPU designated operator, i.e., to deny an ETOE authority to export postal items using UPU airwaybills, to clear foreign customs using UPU customs forms, and to obtain delivery from a foreign designated operator at UPU terminal dues rates.[193]

- *Refusal to deal with foreign ETOEs*. A UPU resolution that allows member countries and their designated operators to refuse to provide UPU customs clearance procedures and UPU terminal dues rates to inbound cross-border postal items dispatched by ETOEs in other countries, whether or not the ETOEs are legitimately established in those countries.[194]

- *Limitation on the supply of IMPC codes*. UPU regulations require that anyone who sends postal items to a public postal operator for treatment under the rules of the UPU must use an International Mail Processing Centre (IMPC) code to identify the originating office. A UPU resolution instructs the UPU secretariat not to issue IMPC codes to ETOEs and private operators.[195]

Anti-remail provisions of the UPU have received considerable scrutiny in the EU over the years. Interception of intra-EU/EEA remail was condemned in the Postal Green Paper and has been the subject of several competition law cases.[196] In our survey we asked Member States to what extent they implemented UPU measures to relating to remail competition in cross-border markets. Eight Member States (CY, EL, IT, LU, LV, PT, SK, IS) declared that they did not interpose any restrictions on remail from other Member States and other industrialised countries. Five Member States (CZ, FR, HU, PT, NO) declared that they implement at least some UPU anti-remail provisions against remail from other Member States or industrialised countries. Twenty-one Member States did not answer. Given the notoriety of remail issues, this silence seems telling. It appears probable that, with the exception of a small number of Member States, UPU anti-remail provisions are still enforced in intra-EU/EEA cross-border postal services where the destination USP does not believe that it is adequately compensated by UPU terminal dues.

---

**192** UPU Convention 2012, Art. 28; UPU Convention 2008, Art. 26.
**193** UPU, 2012 Doha Congress, C6/2012, *continuing in force* 2008 Geneva Congress, Resolution C63/2008 and 2004 Bucharest Congress, Resolution C44/2004.
**194** Ibid.
**195** Ibid.
**196** European Commission, *Green Paper on the Development of the Single Market for Postal Services*, COM(91) 476 (11 Jun 1992), pp. 209-122, 247 (‘In particular, use of Article 25 [the anti-remail article] of the UPU Convention is not appropriate for use within the Community’). For discussion of the competition law cases, see section 2.4.7, below.

With respect to UPU provisions relating to ETOEs, a 2009 UPU survey is useful in identifying the issue without providing a complete picture of current practices.[197]

**197** In our survey, we asked several questions on enforcement of UPU anti-ETOE resolutions, but our questions provided insufficient to clarify current anti-ETOE measures.

Table 2-20 EU/EEA restrictions on ETOES, 2009

| | Does your country allow the establishment of ETOEs on its territory? | If so, does your country allow the operation of ETOEs on its territory, but with conditions? | Does your designated operator accept inbound items tendered by ETOEs? | If so, does your designated operator accept these ETOE items, but with conditions? | Other conditions | Entity |
|---|---|---|---|---|---|---|
| BE | Yes, for letter post | 1 UPU documentation not allowed<br>2 UPU transport and customs docs allowed (e.g., CN 22, CN38) | Yes, for letter post | 1 UPU documentation allowed<br>2 Postal customs clearance allowed<br>3 UPU terminal dues rates apply<br>4 Bilateral agreements with the ETOE operator required<br>5 Reciprocity agreements with member country required | The principle of reciprocity applies | NRA |
| BG | No | | No | | | MC |
| CZ | Yes, for letter post, parcels and EMS | 1 UPU documentation allowed only for ETOE items sent to countries that accept ETOE items under UPU Acts<br>2 UPU transport and customs docs allowed (e.g., CN 22, CN38) | Yes, for letter post, parcels and EMS | 1 UPU documentation is allowed<br>2 Postal customs clearance allowed | Terminal dues owing to the ETOE must not be lower than those owing to the designated operator of the ETOEs country or origin | MC |
| DE | Yes, for letter post and parcels | Yes, see other conditions | Yes, for letter post and parcels | Yes, see other conditions | 1 UPU documentation allowed only for ETOE items sent to countries that accept ETOE items under UPU Acts<br>2 The applicant needs authorisation issued by the NRA to establish an ETOE | MC |
| EE | Yes, for letter post and parcels | Yes, see other conditions | Yes, for letter post, parcels and EMS | Yes, see other conditions | ETOEs are treated as private postal operators and must therefore apply for a license from the Estonian Competition Authority for all postal operations within the scope of the Postal Act | MC |

| | Does your country allow the establishment of ETOEs on its territory? | If so, does your country allow the operation of ETOEs on its territory, but with conditions? | Does your designated operator accept inbound items tendered by ETOEs? | If so, does your designated operator accept these ETOE items, but with conditions? | Other conditions | Entity |
|---|---|---|---|---|---|---|
| EL | ? | ? | Yes, for letter post, parcels and EMS | 1 Items accepted in accordance with rates, terms and conditions of acceptance for domestic postal service<br>2 Postal customs clearance allowed<br>3 Bilateral agreements required | 1 For mail presented by ETOEs belonging to designated operators which are signatories to the REIMS II Agreement, the rates provided in that agreement apply<br>2 For mail tendered by designated operators which are not signatories to the REIMS II Agreement, the rates are based on the domestic tariff and linked to quality of service measurements<br>3 Use of specific letter bill (CN 31 ETOE) | MC |
| ES | No | | Yes, for letter post, parcels and EMS | 1 Items accepted in accordance with rates, terms and conditions of acceptance for domestic postal service | See also IB Circular 56/2004 | MC |
| HR | Yes, for letter post, parcels and EMS | ETOEs are allowed with no conditions | Yes, for letter post, parcels and EMS | Accepted with no conditions | Other terminal dues agreements also allowed | DO |
| IE | Yes, for letter post, parcels and EMS | 1 UPU documentation is not allowed<br>2 UPU documentation allowed only for ETOE items sent to countries that accept ETOE items under UPU Acts<br>3 UPU transport and customs docs allowed (e.g., CN 22, CN38)<br>4 Bilateral agreements | Yes, for letter post, parcels and EMS | 1 UPU documentation allowed. (Subject to a bilateral agreement and split of mail by format – E, P and G)<br>2 Postal customs clearance allowed (subject to a bilateral agreement)<br>3 Bilateral agreements required<br>4 Reciprocity agreements required. | 1 Operators must obtain authorisation from NRA in Ireland if required under national regulations<br>2 A bilateral agreement is concluded with An Post<br>3 No ABA remail operations engaged in by the ETOE operator<br>4 Adequate measures are taken to ensure that users in Ireland and abroad are aware that An Post is not being used to forward the mail<br>5 ETOEs do not to misrepresent themselves as associated with An Post | DO |
| LT | Yes, for letter post, parcels and EMS | 1 UPU documentation is not allowed<br>2 Bilateral agreements required | Yes, for letter post, parcels and EMS | Accepted with no conditions | | DO |
| MT | No | | Yes, for letter post, parcels and EMS | 1 UPU documentation allowed<br>2 Postal customs clearance allowed<br>3 UPU terminal dues rates apply | | MC |

| | Does your country allow the establishment of ETOEs on its territory? | If so, does your country allow the operation of ETOEs on its territory, but with conditions? | Does your designated operator accept inbound items tendered by ETOEs? | If so, does your designated operator accept these ETOE items, but with conditions? | Other conditions | Entity |
|---|---|---|---|---|---|---|
| NL | Yes, for letter post, parcels and EMS | 1 UPU transport and customs docs allowed (e.g., CN 22, CN38) | Yes, for letter post, parcels and EMS | 1 Items accepted in accordance with rates, terms and conditions of acceptance for domestic postal service<br>2 UPU documentation allowed<br>3 Postal customs clearance allowed<br>4 Bilateral agreements required | NL agrees to apply UPU Acts to inbound items received from ETOEs (including regulations on UPU documents, transport handling procedures and postal customs clearance), in so far as there is also a bilateral agreement with the designated operator operating the ETOE that outlines the terminal dues rates applicable for this flow | MC |
| PL | Yes, see other conditions | Yes, see other conditions | Yes, for letter post | 1 UPU documentation allowed<br>2 Postal customs clearance allowed<br>3 UPU terminal dues rates apply<br>4 Bilateral agreements required | Not in monopoly area. | MC |
| PT | Yes, see other conditions | | Yes, for letter post, parcels and EMS | 1 Items accepted in accordance with rates, terms and conditions of acceptance for domestic postal service<br>2 Other condition is the establishment of a commercial agreement | ETOEs must comply with the rules applicable to entities providing competitive postal activities, i.e., on the basis of a postal authorisation | MC |
| SE | Yes, for letter post, parcels and EMS | ETOEs are allowed with no conditions | Yes, for letter post, parcels and EMS | 1 UPU documentation allowed<br>2 Postal customs clearance allowed<br>3 UPU terminal dues rates apply | Other terminal dues agreements also allowed | MC |
| UK | Yes, for letter post, parcels and EMS | 1 UPU documentation is not allowed<br>See also other conditions | No | | 1 In accordance with UPU Congress resolution C 48/2004 ETOE traffic is commercial and should be charged at domestic retail or commercial rates (as appropriate) in the country of destination | DO |

Source: Adapted by WIK from UPU, CA C 1 GPI 2009.2 – Doc 2a.Annexe 1 (20 Oct 2009) (not all EU/EEA countries answered the survey).

According to the UPU survey, in 2009 only two Member States (CZ, SE) permitted unrestrained competition from ETOEs. In the outbound market, these Member States permitted ETOEs of foreign postal operators to establish offices in their territories and use UPU documentation without restriction. Foreign ETOEs could thus compete with the national public postal operator on equal terms. In the inbound market, their USPs accepted inbound items from ETOEs in other countries under UPU rules, allowing ETOEs to compete in the outbound markets in the countries where they are located on equal terms with national public postal operators (although the ETOEs may be restricted by those countries). At the other end of the spectrum, two Member States (BG, UK) allowed no outbound or inbound ETOE operations. Three Member States (EL, NL, PT) are almost as restrictive in the inbound market because they declined to provide delivery at UPU terminal dues rates, placing the foreign ETOE at a severe competitive disadvantage vis-à-vis the national public postal operator. Three Member States (BE, IE, LT) allowed ETOEs to compete in the outbound market against the national public postal operator only if the ETOE's home country granted reciprocal rights to its public postal operator. Several Member States also required reciprocal rights before they would accept inbound mail from foreign ETOEs (BE, EL, IE, NL, PL). These reciprocal provisions allowed limited competition while reinforcing the special rights of the USP conferred by its nomination as a 'designated operator' under the UPU system.

Even though this table is incomplete and four years old, it shows a pattern of enforcement of UPU anti-ETOE rules, albeit with nuances and exceptions. Unfettered competition among ETOEs would not necessarily accomplish full market opening because the acts of the UPU do not treat designated operators and other postal operators in the same manner. Nonetheless, unrestricted competition among ETOEs would likely render the UPU distinctions between designated operators and non-designated operators commercially and legally untenable.

The Postal Directive is not concerned with restraints on bypass competition per se even though its overall objective is to promote a single and liberalised European postal market consistent with ensuring a basic universal service of specified quality. Nonetheless, restraints on bypass competition appear to be inconsistent with several provisions of the Postal Directive.

The anti-remail provisions of the UPU are designed to protect the ability of USPs to price discriminate between charges for delivery of inbound mail and domestic postage rates. Discrimination is justified by a supposed need to maintain terminal dues at rates that are less than domestic postage levels and therefore, in the EU/EEA area, below appropriate costs. Since the Directive prohibits discrimination in the prices of universal services and requires that such prices be set at cost-oriented levels, it appears that the anti-remail provisions are incompatible with the Postal Directive.

The anti-ETOE provisions of the UPU are similar to, but broader than, the anti-remail provisions. They have the effect of inhibiting full-fledged competition between public postal operators in the EU/EEA. For example, even though France has repealed its reserved area (as required by the Postal Directive) and bpost has established an ETOE in Paris, the bpost ETOE in Paris cannot compete on equal terms with La Poste (France) for international mail destined for the United States because the U.S. Postal Service refuses to allow postal items received from the bpost ETOE the same terminal dues and customs treatment allowed postal items received from La Poste. The same market allocation mechanism could be invoked in intra-EU/EEA competition. At bottom, UPU restraints on ETOE competition appear to be grounded in the fact that under the UPU system, 'designated operators' have legal privileges that non-designated operators do not. Yet the granting or maintaining in force of 'special rights for the establishment and provision of postal services' is prohibited by Article 7(1) of the Postal Directive.

In sum, UPU-based provisions relating to bypass competition appear to be inconsistent with Postal Directive. Two caveats are in order, however. First, enforcement of anti-remail and anti-ETOE provisions is generally non-public. From fragmentary information it appears that some Member States more fully implement the principles of the Directive with respect to ETOEs than others, but it is impossible to provide a complete portrait of individual Member States Second, in this section, we have considered only restraints on postal services among Member States and between Member States and industrialised countries. While such restraints appear unjustifiable under the Postal Directive, there are stronger arguments in favour of continuing restraints on competition from public postal operators in developing countries that seek to take advantage of special preferential terminal dues rates.

### 2.4.7 Terminal charges for cross-border parcels

In addition to terminal dues for letter post items, the UPU establishes charges for the delivery of cross-border postal parcels called 'inward land rates'. Cross-border parcels, however, account for only a small percentage of cross-border packages conveyed by USPs. According to an estimate by UPU, designated operators handle about 800 cross-border small packets per year — packages weighing less than 2 kg and conveyed with the letter post — compared to about 50 million postal parcels.[198] For this reason, terminal dues for letter post items (what the UPU calls 'terminal dues') have much greater effect on the market for cross-border packages than terminal dues for parcels (what the UPU calls 'inward land rates').

---

**198** UPU, Postal Operations Council, Committee 1, POC C 1 PDMG 2011.1–Doc 4 Annex 1 (Letter Post Action Plan (Ver 1-2, 4 Apr 2011)).

Under the Universal Postal Convention, inward land rates are established in regulations adopted by the Postal Operations Council (POC).[199] In general, POC regulations establish inward land rates at 71 per cent of the rates charged in 2004, the last year when designated operators set inward land rates individually. This base rate is modified by a floor and adjustments for service quality.[200] Rates established by such a procedure cannot be considered cost-oriented as required by Article 12 of the Postal Directive.

Almost all EU/EEA USPs (except BG, CY, LI) also participate in a consortium known as the E-Parcel Group (EPG). In addition, the USPs of Switzerland and the United States are members of the EPG. There is no public information about the volumes conveyed or how rates are set.[201]

### 2.4.8 Application of the competition rules to cross-border services

In addition to the discrepancies between UPU terminal dues rates and the tariff principles of the Postal Directive, UPU terminal dues agreements and restraints on bypass competition also appear to be inconsistent with EU competition rules.[202] The 'competition rules' are set out in Articles 101 to 106 of the Treaty on the Functioning of the European Union (TFEU). Briefly, Article 101 prohibits price-fixing agreements with some exceptions. Article 102 prohibits abuses by undertakings with a dominant position in the market. Each article is concerned with anticompetitive effects on trade between Member States.

Four competition law decisions serve as the main guides for evaluating the implications of the competition rules for cross-border postal services — three by the Commission and one by the Court of Justice of the European Union. Two involved price-fixing, and two involved abuse of dominant position. The decisions are *Reims II* (1999), *GZS* (2000), *DPAG Cross-border Mail* (2001), and *Reims II Renotification* (2003). This section summarises the implications of the competition rules for UPU terminal dues agreements and restraints on bypass competition described above.

**199** 2012 Universal Postal Convention, Article 36 ('The Postal Operations Council shall have the authority to fix the following rates and charges, which are payable by designated operators in accordance with the conditions shown in the Regulations: . . . (3) inward land rates for the handling of inward parcels'.)

**200** UPU, Parcel Post Regulations (2012), Article RC192.

**201** See FTI Consulting, *Intra-Community Cross-Border Parcel Delivery: A Study for the European Commission* (2011), pp. 134-36.

**202** In 2012, Prof. Damien Geradin of Tilburg University (Netherlands) prepared an extensive analysis of the compatibility of the 2012 UPU target system with the EU competition rules. Damien Geradin, 'Legal Opinion on the Compatibility of the Proposed Target System for Terminal Dues with EU Law' (2012). The following discussion draws heavily from Prof. Geradin's opinion in so far as analysis of the terminal dues agreements are concerned.

#### 2.4.8.1 Price-fixing — Article 101 TFEU

Article 101(1) TFEU specifically prohibits 'all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market'. As described below, Article 101(3) provides an exception for an agreement which provides certain public benefits.

Terminal dues agreements have been reviewed by the Commission under Article 101 TFEU on several occasions.[203] The 1988 *Remail Case* complaint against efforts by European postal administrations to restrain remail competition was, in part, a challenge to an agreement to fix terminal dues at levels designed to restrain remail.[204] The Commission's preliminary agreement with the complaint in 1993 forced the postal administrations to take a more cost-oriented approach towards terminal dues.[205] In 1995, after long negotiations, the postal administrations submitted the short-lived and unsatisfactory Reims I agreement to the Commission for approval. Although Reims I went into effect on 1 January 1996, it lapsed on 30 September 1997 without a formal decision by the Commission. Reims I ended because the Spanish post office never agreed (a formal condition subsequent in the agreement) and because the Commission informally objected to several provisions as anticompetitive.

The Commission then conducted two public reviews of the Reims II terminal dues agreement which establish the conceptual framework for analysing the implications of the competition rules for the UPU terminal dues agreements.

- In the *Reims II* decision issued in 1999, the Commission concluded that the Reims II agreement was a price-fixing agreement that infringed Article 101(1) TFEU. However, the Commission also found that the agreement qualified for the public benefits exception set out in Article 101(3) because of pro-competitive aspects and efficiencies, some of which were included by the proposed agreement and some of which the Commission required to be added before approval.[206]

---

**203** See generally James I. Campbell Jr., 'The Evolution of Terminal Dues and Remail Provisions in European and International Postal Law' in *The Liberalization of Postal Services in Europe*, ed. Damien Geradin (2002), chap. 1.

**204** For a short summary of the development of EU postal policy and seminal role of this case, see section 4.1.2, below. A copy of the 1988 complaint of the International Express Carriers Conference against anti-remail practices of the European postal operators may be found James I. Campbell Jr., *The Rise of Global Delivery Services* (2001), chap. 17.

**205** European Commission, Statement of Objections, Case IV32.791 – Remail (5 Apr 1993), p. 20, paragraph 64 ('The postal administrations' objective was concerted action which would protect their commercial position, limit competition between them, and put remailers at a disadvantage').

**206** Commission Decision 1999/695/EC - *REIMS II* - 15 September 1999 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement, OJ L 275, 26 Oct 1999, p. 17.

- In 2003 in the *Reims II Renotification* decision, the Commission approved extension of the Reims II agreement but required additional pro-competitive provisions before granting a 'negative clearance'. One requirement was that private providers of postal services must be given non-discriminatory access to terminal dues on same terms as parties to the Reims II agreement under similar conditions.[207]

As described in sections 2.4.3 and 2.4.4 above, EU Member States and/or their USPs currently participate in four categories of terminal dues agreements:

- Reims V terminal dues agreement;
- 2012 UPU target system (three rate levels);
- 2012 UPU transitional system (four rate levels); and
- bilateral terminal dues agreements.

The two UPU terminal dues agreements were approved by the 2012 Doha Congress of the UPU and become effective on 1 January 2014. From a legal perspective, the 2012 UPU terminal dues agreements do not differ significantly from the prior 2008 agreements.

Based on the Commission's decisions relating to the Reims II agreements, it appears that the first three categories of terminal dues arrangements must be considered price-fixing agreements subject to the prohibition in Article 101(1). Although the UPU terminal dues agreements are included in acts of the UPU signed by the Member States, they were negotiated by the designated operators (i.e., USPs) and apply to the designated operators, so the UPU terminal dues agreements appear to fall within the definition of an agreement between undertakings under Article 101(1) TFEU.[208] Each of the terminal dues agreements applies to extra-EU/EEA as well as intra-EU/EEA postal services, but this does not prevent application of EU competition rules.[209]

The lawfulness of the first three categories of terminal dues under EU competition rules depends, therefore, on whether they can qualify for the public benefits exception of Article 101(3). Paragraph 3 provides that the prohibition in paragraph 1 may be

**207** Commission Decision 2004/139/EC - *REIMS II renotification* - 23 October 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, OJ L 56, p. at §95: '*By linking the price for cross-border delivery service to the price for the domestic service, which is determined primarily by domestic considerations, the Parties eliminate or reduce their freedom to set the prices they charge for the delivery of incoming cross-border mail*.'

**208** Geradin, 'Proposed Target System' §§ 56-59. Article 106(1) TFEU provides that 'Member States shall neither enact nor maintain in force any measure contrary to' the competition rules. Article 106(3) provides that the Commission may adopt a decision applying the competition rules to the Member States directly.

**209** Case 22-71, *Béguelin Import v S.A.G.L. Import Export*, [1971] ECR 949, at §11: 'The fact that one of the undertakings participating in the agreement is situated in a non-member country is no obstacle to the application of that provision, so long as the agreement produces its effects in the territory of the Common Market.'

declared inapplicable if the agreement 'contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit'. In addition, the agreement should not impose 'restrictions which are not indispensable to the attainment of these objectives' nor 'afford such undertakings the possibility of eliminating competition'.

While the Commission accepted that Reims II could qualify under paragraph 3 in 1999 and 2003, it is questionable whether the Reims V agreement would still be considered compatible with Article 101 TFEU by qualifying for an exception under the criteria of Article 101(3) TFEU. According to informal reports, the Reims V agreement is similar in concept to the Reims II agreement but includes exceptions from the pro-competitive principles required by the Commission in order to gain acceptance of individual USPs. At the same time, with the termination of all reserved areas, USPs are now potentially — and in some cases, actually — horizontal competitors in a regional European market. The increasing commercialisation of the USPs and adoption of the Third Postal Directive in 2008 would seem to have raised the bar for exemption under Article 101(3) TFEU.

For the 2012 UPU target system, qualifying for exception from Article 101 TFEU under the criteria of Article 101(3) seems extremely unlikely. Unlike the Reims II agreements, prices established by the UPU's target system are unrelated to domestic postage since, in almost all cases, they are determined by caps and floors. As a result, the UPU target system establishes flat rate terminal dues that do not reflect the cost of delivery. Indeed, as explained in section 2.4.5, the net effect of UPU target system appears to be to compel mailers in some Member States to subsidise mailers in other Member States. The total economic distortions implied by the UPU target system account for about one third of the total cost of delivery of inbound mail exchanged among industrialised countries. The 2012 UPU target system also distorts competition between designated operators and non-designated operators since it does not provide for non-discriminatory access by non-designated operators, an absolute condition for approval of the Reims II agreement in 2003. In sum, as Professor Damien Geradin has concluded, the 2012 UPU target system

> constitutes a price-fixing agreement, which is caught under Article 101(1) TFEU and which cannot be exempted under Article 101(3) since it does not contain pro-competitive effects and efficiencies capable of offsetting its anti-competitive effects.[210]

Whether or not the UPU transitional system could qualify under Article 101(3) is a more difficult question. As explained in section 2.4.3, 4 EU/EEA Member States are included in the transitional system: Bulgaria (BG), Latvia (LV), Lithuania (LT), and Romania (RO). For these Member States, the transitional system produces distortions and

**210** Geradin, 'Proposed Target System' § 102.

inefficiencies both in the exchange of postal services among EU/EEA Member States and in the competition between EU/EEA USPs in the market for extra-EU/EEA postal services. These distortions might preclude an Article 101(3) exemption for the UPU transitional system in so far as it applies to these 4 Member States.

Aside from the specific implications for these 4 Member States, however, the overall effect of the UPU transitional system is that EU/EEA Member States provide delivery for mail received from developing countries at rates substantially below cost. Since the beneficiaries are developing countries, there would appear at first glance to be an argument that the transitional system 'contributes to improving the production or distribution of goods or to promoting technical or economic progress'. At the same time, however, one must take into account that granting below cost postal delivery to, for example, ecommerce packages received from China and India, injures mail order companies and local merchants in the EU/EEA area who are competing against foreign suppliers. Then, too, the subsidy for developing countries created by the transitional system is structured so that some EU/EEA Member States pay a much heavier 'tax' than others. And it is hardly self-evident that the transitional system can pass the final test in paragraph 3: 'restrictions which are not indispensable to the attainment of these objectives.' It has been pointed out that there are much more efficient and transparent ways of directing postal assistance to needy developing countries than the UPU transitional system.[211]

Little can be said about whether the bilateral terminal dues agreements are consistent with Article 101. Since all information about these agreements is non-public, whether any of these agreements 'have as their object or effect the prevention, restriction or distortion of competition within the internal market' cannot be determined. However, in so far as bilateral agreements depend upon or continue inappropriate restrictions or distortions created by Reims V or UPU terminal dues agreements, it would seem that the competition rules should apply to them in a similar manner.

The UPU system of inward land rates appears to represent a classic example of price-fixing. As described above, the UPU has established a committee of designated operators to establish prices for the delivery of cross-border parcels. The only question under the competition rules appears to be whether the UPU system would qualify for an exception under Article 101(3). This seems unlikely under the principles of the *Reims II - Renotification decision.* Clearly, the inward land rates system does not permit access for non-designated operators, as the Commission required in *Reims II - Renotification*. Nor is it easy to argue that price-fixing by the POC is necessary to sustain cross-border parcel post service when there was no price-fixing prior to 2004.

---

**211** See James I. Campbell Jr, Alex Kalevi Dieke, and Martin Zauner, 'UPU Terminal Dues: Winners and Losers,' in *Multi-model Competition and the Future of Mail*, edited by Michael A. Crew and Paul R. Kleindorfer (2012), chap. 20.

In absence of any public information, whether or not the pricing practices of the EPG are consistent with Article 101 TFEU cannot be determined.

### 2.4.8.2 Abuse of dominant position — Article 102 TFEU

Article 102 TFEU prohibits abuses by one or more undertakings of a dominant position within the internal market or in a substantial part of in so far as it may affect trade between Member States. Article 102 provides that, inter alia, the application of dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, constitutes such an abuse (see Article 102(c)).[212]

In 2000, in the *GZS* case,[213] the Court of Justice of the European Union considered whether the Deutsche Post could, under authority of Article 25 of the 1989 Universal Postal Convention (the anti-remail provision),[214] require a mailer to pay domestic postage for delivery of 'nonphysical ABA remail'.[215] The mail in question consisted of credit card statements printed in Denmark and the Netherlands and posted in large quantities to addressees in Germany by two banks, GZS and Citibank, with offices in Germany. The Deutsche Post delivered the letters and sued the banks for payment of German domestic postage, claiming the mail was 'non-physical ABA remail' and citing UPU Article 25. The banks refused to pay domestic postage in addition to the cross-border postage already paid to the Danish and Dutch post offices, noting that the Deutsche Post would receive terminal dues from the origin post offices to cover the cost of delivery.

The Court held it was an abuse of dominant position for the Deutsche Post office to enforce the remedies provided by UPU Convention, i.e., to return the mail to the origin post office[216] or to charge the sender full domestic postage.[217] On the other hand, the Court found that if Deutsche Post were obliged to deliver large volumes of nonphysical ABA remail at UPU terminal dues rates, 'without any provision allowing it to be

---

**212** See the discussion of C-209/2010, Post Danmark v Konkurrencerådet, ___ ECR __, in section 2.3.1.1, above.

**213** Joined Cases C-147/97 and C-148/97, *Deutsche Post AG v Gesellschaft für Zahlungssysteme mbH (GZS) and Citicorp Kartenservice GmbH*, [2000] ECR I-825. This case involved questions referred to the Court from a German court.

**214** The anti-remail provisions in successive versions of the Universal Postal Convention have been Article 25 (1989), Article 25 (1994), Article 43 (1999), Article 27 (2004), Article 26 (2008), and Article 28 (2012). The anti-remail provision has been revised from Convention to Convention but the basic concepts have remained the same.

**215** In UPU terminology, 'ABA remail' refers to mail a sender residing in country A transports to a second country B and posts back to addressees in the origin country A. The anti-remail provision of the UPU Convention not only applies to mail physically transported from A to B but also to mail which a sender in country A 'causes to be posted' in country B. If a sender in country A causes mail to be posted in country B without physically transporting the mail from A to B, the mail posted from country B to country A is said to be 'non-physical' or 'virtual' ABA remail.

**216** Joined Cases C-147/97 and C-148/97, *Deutsche Post AG v Gesellschaft für Zahlungssysteme mbH (GZS) and Citicorp Kartenservice GmbH*, [2000] ECR I-825, para. 60.

**217** Ibid., para. 58.

financially compensated for all the costs occasioned by that obligation, the performance, in economically balanced conditions, of that task of general interest would be jeopardised'.[218] Therefore, the Court held that the Deutsche Post could charge the mailer the *difference* between the domestic postage that it would have received and the terminal dues that it actually received.

> [I]n the absence of an agreement between the postal services of the Member States concerned fixing terminal dues in relation to the actual costs of processing and delivering incoming trans-border mail, it is not contrary to Article 90 of the Treaty [Article 106 TFEU], read in conjunction with Articles 86 [Article 102 TFEU] and 59 [Article 56 TFEU] thereof, for a body such as Deutsche Post to exercise the right provided for by Article 25(3) of the UPC [Universal Postal Convention], in the version adopted on 14 December 1989, to charge, in the cases referred to in the second sentence of Article 25(1) and Article 25(2) thereof, internal postage on items of mail posted in large quantities with the postal services of a Member State other than the Member State to which that body belongs. On the other hand, *the exercise of such a right is contrary to Article 90(1) of the Treaty [Article 106(1) TFEU], read in conjunction with Article 86 [Article 102 TFEU] thereof, in so far as the result is that such a body may demand the entire internal postage applicable in the Member State to which it belongs without deducting the terminal dues corresponding to those items of mail paid by the abovementioned postal services*.[219]

In essence, the Court found that the German post office would be justified in treating nonphysical ABA remail as domestic mail:

> In such a case, it must be regarded as justified, for the purposes of the performance, in economically balanced conditions, of the task of general interest entrusted to Deutsche Post by the UPC, to treat cross-border mail as internal mail and, consequently, to charge internal postage.[220]

In the 2001 decision, *DPAG Cross-border Mail,* the Commission found that Deutsche Post (DPAG) abused its dominant position by discriminating between different categories of inbound cross-border mail.[221] This case involved letter post items collected by the British Post Office (BPO) in the United Kingdom and transmitted to Deutsche Post for delivery to addressees in Germany. The Deutsche Post again cited the anti-remail provisions of the Universal Postal Convention to justify its practice of intercepting and surcharging inbound mail that was posted by what Deutsche Post

**218** Ibid., para. 50.
**219** Ibid., para. 61 (emphasis added).
**220** Ibid., para. 52.
**221** Commission Decision 2001/892/EC of 25 July 2001, *Deutsche Post AG - Interception of cross-border mail*, OJ L 331, 15 Dec 2001, p. 40.

deemed to be companies with sufficient contacts with Germany to be treated as German mailers. According to the Deutsche Post, only mail sent by genuine British companies was entitled to be delivered for the terminal dues rate set by the UPU. Mail sent by companies with sufficient German contacts were, in effect, were circumventing German domestic postage and sending 'non-physical' or 'virtual' ABA remail from the UK. Deutsche Post drew the distinction between genuine cross-border mail and virtual ABA remail based upon consideration of several factors such as reference to a German company as the sender, use of the stationary of a German company, use of German address for replies, and use of German distribution point for orders. In exercising its rights under the anti-remail article of the UPU Convention, the Deutsche Post delayed delivery of the mail and demanded that the addresses pay a charge equal to the retail domestic postage less the terminal dues paid the BPO.

The Commission found that Deutsche Post's policy of delaying and surcharged 'virtual ABA remail' to be an abuse of a dominant position. The Commission stated:

> *DPAG treats differently incoming cross-border letter mail which it considers to be 'genuine' international mail (i.e. letter mail without any references to entities residing in Germany) on the one hand and incoming cross-border letter mail which it considers to be virtual A-B-A remail* on the basis of the inclusion of a reference to an entity residing in Germany, on the other. Such an entity may be a subsidiary or agent located in Germany. In the former case, DPAG charges the BPO the terminal dues which have been agreed between the respective PPOs [public postal operators]. The BPO charges UK senders the normal cross-border tariff, which is calculated on the applicable terminal dues. In the latter case DPAG charges the BPO or the senders the full domestic tariff applicable in Germany, which is higher. *In both cases DPAG performs exactly the same service, i.e. collecting bags of incoming cross-border letter mail at a reception point, transporting the mail to a sorting centre where it is sorted, then forwarded and delivered to addressees residing in Germany*. . . .
>
> By charging different prices for equivalent transactions — i.e. the forwarding and delivery of incoming cross-border letter mail — DPAG is behaving in a discriminatory manner. *The different tariffs charged by DPAG cannot be justified on the basis of objective economic factors*. DPAG claims that it incurs extra costs for the 'identification and processing' of mail which it classifies as virtual A-B-A remail. DPAG has not specified or quantified in any way these additional costs. Since this classification is based on an erroneous assumption, the extra costs incurred — if they exist — should be

> charged to all senders of incoming cross-border mail in a non-discriminatory manner.[222]

The Commission further concluded the Deutsche Post abused its dominant position by refusing to supply delivery services. Although Deutsche Post did not refuse outright to deliver the alleged virtual ABA remail, it delayed delivery for significant periods of time and refused to deliver until the addressee paid additional charges. The Commission concluded that 'The refusal on DPAG's part to supply its forwarding and delivery service on terms that are acceptable to the sender and/or the sending postal operator is tantamount to a constructive refusal to sell.'[223]

The Commission also held that Deutsche Post abused its dominant position by imposing unfair selling prices on the alleged virtual ABA remail received from BPO. In effect, Deutsche Post charged full retail domestic postage rates for delivery of such mail even though it only delivered mail which had already been collected and transported to a sorting centre by BPO. The Commission pointed to statements by Deutsche Post and other postal administrations, made in connection with the Commission's review of the Reims terminal dues agreements, that the proper charge for delivering inbound cross-border mail is 80 per cent of retail domestic postage and that actual practice among some USPs suggests that 70 per cent could be fairer figure. So the Commission concluded that

> In the absence of any substantive evidence that the average economic value of delivering an incoming cross-border mail item to its German addressee exceeds EUR 0,45 (80 % of the domestic tariff), the Commission concludes that the price charged by DPAG for incoming cross-border mail which it considers to be virtual A-B-A remail (EUR 0,56) exceeds the average economic value of that service by at least 25 %.[224]

---

**222** Commission Decision 2001/892/EC of 25 July 2001, *Deutsche Post AG - Interception of cross-border mail*, OJ L 331, 15 Dec 2001, §§ 128-29 (emphasis added).

**223** Ibid., para. 143. Similarly, in an appeal from the original Remail Case decision, the Court of First Instance in 1988 reversed the Commission and ruled that losses resulting from non-cost based terminal dues did not justify interception of cross-border mail under color of the UPU anti-remail provision: 'Contrary to the Commission's contention, the interceptions in dispute cannot be objectively justified by the fact that the terminal dues, which constitute the public postal operators' remuneration in the case of ABA remail, do not enable those operators to cover their costs of delivering the mail. *Although there is an imbalance between the costs which a public postal operator bears in delivering incoming mail and the remuneration which it receives, this imbalance is the result of an agreement concluded among the public postal operators themselves . . . under which the terminal dues are fixed amounts, determined without taking into account the costs actually borne by the public postal operator of the country of destination. Such a practice, which in the case of an undertaking in a dominant position helps to offset the adverse effects of a convention which it itself helped to draft and to which it is a party, cannot be regarded as an objective justification for excluding interception of commercial ABA mail from the scope of Article 86 of the Treaty [Article 102 TFEU]*'. Joined Cases T-133/95 and T-204/95, IECC v Commission, [1998] ECR II-3645 at paragraphs 99-101. An appeal of this holding by the Deutsche Post was rejected by the Court of Justice of the European Union. Case C-428/98, Deutsche Post AG v IECC, [2000] ECR I-3061.

**224** Ibid., para. 166.

Finally, the Commission ruled that Deutsche Post abused its dominant position by limiting production, markets, and technical development. The Commission pointed out that Deutsche Post actions raised the cost and reduced the quality of postal services from the UK to Germany. The Commission concluded that DPAG:

> (i) limits the production of services on the German market for the forwarding and delivery of incoming cross-border letter mail to the prejudice of consumers and (ii) limits postal operators opportunities to compete on the UK market for outgoing cross-border letter mail bound for Germany to the prejudice of consumers.[225]

The decisions in *GZS* (2000) and *DPAG Cross-border Mail* (2001), as well as the Commission's later *Reims II Renotification* (2003) price-fixing decision, appear to the establish the conceptual framework to evaluating the several terminal dues agreements and restrains on bypass competition for potential abuse of dominant position as defined in Article 102. In brief, our conclusions — which concern USPs only where they have a dominant position in the relevant market — are as follows:

1) USP a*pplication of different terminal dues based on the country of origin.* As the current survey makes clear, EU/EEA USPs apply different terminal dues systems to the delivery of identical cross-border postal items depending on which country originates the mail. The inevitable result is that USPs, often in market dominant positions, charge 'different prices for equivalent transactions [which] cannot be justified on the basis of objective economic factors'.[226] Moreover, as the Court of Justice of the European Union has emphasised, even if discrimination on grounds of nationality is not expressly cited in Article 102(c), discrimination by a market dominant undertaking on the grounds of nationality constitutes an abuse of a dominant position.[227] In light of such considerations, where a USP has a market dominant position, it appears that the application of different terminal dues systems for delivery of similar inbound cross-border postal items, without objective economic justification, may be considered an abuse of dominant position.[228]

2) USP a*pplication of different delivery charges for inbound cross-border mail and equivalent domestic mail*. Submissions by the USPs, the Commission's findings in the two Reims II cases, and the Commission's analysis in the *DPAG Cross-border Mail* all conclude that the cost of delivering inbound cross-border mail is approximately 70 to 80 per cent of priority domestic postage rates. Some suggest that the objective economic relationship between the costs of delivering cross-border mail and priority domestic mail

---

**225** Ibid., para. 178.

**226** Commission Decision 2001/892/EC of 25 July 2001, *Deutsche Post AG - Interception of cross-border mail*, OJ L 331, 15 Dec 2001, para. 129.

**227** Case 7/82, *GVL v Commission,* [1983] ECR 483, para. 56.

**228** See Geradin, 'Proposed Target System' § 55 ('application of different terminal dues rates depending on the country from which the mail items originate could be regarded as an abuse of a dominant position on the part of the designated operators on the market of distribution of international mail').

is higher or lower. It cannot be plausibly maintained, however, that the UPU target system reflects differences which are justified on the basis of objective economic factors. It appears, therefore, that such discrimination between inbound cross-border mail and equivalent domestic mail may be considered an abuse of dominant position. Whether distinctions between inbound cross-border mail and domestic mail, if any, resulting from the Reims V agreement and bilateral agreements may be justified depends on particulars of those terminal dues systems which are not publicly available.

3) USP a*pplication of different delivery charges for inbound cross-border mail tendered by USPs/designated operators and by non-USPs/non-designated operators*. In its 2003 Reims II decision, the Commission specifically found that

> In order to create a viable competitive alternative to the Parties for outgoing crossborder mail in REIMS II countries, competing postal operators should therefore be granted equal access to the terminal dues applicable to the Parties.
>
> In the absence of such an opportunity for non-REIMS II parties, the restrictive effects of the REIMS II Agreement in the outgoing cross-border mail market could result in a possible elimination of competition within the meaning of Article 81(3)(b) of the EC Treaty [Article 101(3)(b) TFEU].

If discrimination between Reims parties and private operators could result in a possible elimination of competition within the meaning of Article 101(3)(b) TFEU, then it appears that such discrimination, if exercised by a USP in a market dominant position, may be also considered an abuse of dominant position under Article 102 as well. While it appears that the 'third party access' required in the 2003 approval of the Reims II agreement is still granted by Reims V parties, no similar right of access is accorded private parties in the UPU target system. Thus, the discrimination between designated operator and non-designated operators created by the UPU target system may be considered an abuse of dominant position.[229]

4) USP a*pplication of different delivery charges for inbound cross-border mail tendered by USPs/designated operators depending on whether or the mail is classified as 'genuine cross-border mail' or 'remail' by the destination USP.* In *DPAG Cross-border Mail*, the Commission concluded that it was an abuse of dominant position to intercept, delay, or surcharge cross-border which Deutsche Post classified as non-physical ABA without objective justification. The Commission's reasoning seems to apply equally to all types of remail. The fact that a portion of cross-border mail may be classifiable by the destination USP as remail does not per se affect the costs of delivery. Indeed, discrimination against remail is another form of discrimination based on national origin.

**229** No conclusion is possible with the respect to bilateral terminal dues agreements since their content is not publicly available. Preferential treatment for some or all postal items received from developing countries may qualify for treatment as general economic interest under Article106(2) TFEU.

The overall effect of anti-remail enforcement is to create a market allocation scheme which restrains competition by giving each designated operator a preferential position in competing for outbound cross-border mail originating in its national territory.[230]

This is not to conclude that there are never legitimate grounds for incepting or surcharging some remail. If Member States provide low terminal dues charges to designated operators from developing countries as matter of public policy, then it would be unreasonable to allow residents of industrialised countries to send mail to developing countries for remailing to the EU and delivery at concessionary rates intended to assist the citizens of developing countries. The issue, however, does not depend on the status of cross-border mail as remail per se but on the abuse of concessionary privileges accorded developing countries. There can be, for example, no reasonable objection to remail that has been transported from one industrialised country to another industrialised country for remailing to the EU.

In light of these observations, we conclude that discrimination between ‘genuine cross-border mail’ and ‘remail’ based solely on the latter’s status as remail may be considered an abuse of dominant position.

5) *Application of different delivery charges, and denial of equal customs treatment, for inbound cross-border mail dispatched from ETOEs as opposed to mail dispatched from offices of designated operators located in their respective national territories*. Under the UPU anti-ETOE resolutions, the USP in the destination country is authorised to refuse to accept inbound cross-border mail received from an ETOE as ‘genuine cross-border mail’. On this basis, inbound mail received from an ETOE may be denied the customs treatment and terminal dues charges what are given to mail received from the designated operator in the same national territory. A refusal to treat ETOE-origin mail in the same way as ‘genuine cross-border mail’ appears legally similar to discrimination against remail. The fact that some USPs reportedly give each other reciprocal rights to establish ETOEs in each other’s territory does appear to lessen the anticompetitive effects. It appears that discrimination between ‘genuine cross-border mail’ and ETOE-origin based solely on the latter’s status as ETOE-origin mail may be considered an abuse of dominant position.[231]

---

**230** See European Commission, Statement of Objections, Case IV32.791 – Remail (5 Apr 1993), p. 24, paragraph 80 (‘In effect Art. 23 UPU supports a market allocation scheme among postal administrations. Partition of the international mail market is encouraged because each UPU member has the potential discretion to refuse to forward or deliver mail that was mailed in a country other than the country of residence of the mailer. The purpose and effect of the scheme is to protect each postal administration's position in the outbound international mail market.’).

**231** However, as in the case of remail there may be legally acceptable justifications for discriminating against ETOEs which seek to abuse privileges granted to USPs in developing countries for reasons of foreign policy.

#### 2.4.8.3 Summary

In sum, the following conclusions appear fair with respect to the applicability of the competition rules to the regulation of cross-border postal service.

- The Reims V terminal dues agreement is a price-fixing agreement within the meaning of Article 101(1) TFEU. It appears questionable whether, after enactment of the Third Postal Directive, this agreement could qualify for the public benefits exception set out in Article 101(3), but no conclusion can be reached without more information about the terms of the agreement.

- The UPU target system of terminal dues is a price-fixing agreement within the meaning of Article 101(1). It appears very unlikely that this agreement would qualify for the public benefits exception set out in Article 101(3).

- The UPU transitional system of terminal dues is a price-fixing agreement within the meaning of Article 101(1). It appears unclear whether this agreement would qualify for the public benefits exception set out in Article 101(3), in particular in so far as it applies to the four EU/EEA Member States who are members of the transitional system (BG, LT, LV, RO).

- The UPU system of establishing inward land rates is a price-fixing agreement within the meaning of Article 101(1). It appears unlikely that this agreement would qualify for the public benefits exception set out in Article 101(3).

- Given the lack of public information, no conclusions can be drawn concerning bilateral terminal dues agreements or the rate-setting procedures of the EPG.

- It appears likely that, where a USP has a market dominant position, it commits an abuse of dominant position within the meaning of Article 102 TFEU if it charges terminal dues that discriminate, without objective economic justification, on basis of the national origin of the mail (including domestic versus foreign origin), the designated/non-designated status of the operator, the remail/non-remail character of the mail, or the ETOE/non-ETOE status of the USP's office dispatching the mail.

## 2.5 Universal postal service

### 2.5.1 Services ensured as universal services

Under the Postal Directive, the term *universal service* refers to a set of affordable postal services of 'specified quality' whose provision is *ensured* by the Member State:

> Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.[232]

At a minimum, Member States must ensure a universal service that provides for the collection, sorting, transport, and distribution of (i) postal items weighing up to 2 kg and (ii) postal packages up to 10 kg, as well as services for registered items and insured items in both categories. In addition, the Postal Directive requires Member States to ensure that the postal services which comprise the universal service meet certain standards. For example, delivery must be made at least five days per week to every home or business address.[233] Prices must be 'affordable', 'cost-oriented', 'transparent and non-discriminatory'.[234] The universal service must provide at least one delivery to 'the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the national regulatory authority, one delivery to appropriate installations'. Quality of service standards must be set and monitored by independent bodies having no link to the USP.

Not all postal services are universal services. The Postal Directive places two specific boundaries on the concept of universal service. First, the Directive makes clear that express services cannot be considered universal services.[235] Although not explicitly defined in the Directive, the term 'express service' refers to a value-added service, where the extra value may take different forms and is reflected in a higher price than charged for basic letter post service. As the Commission has noted, 'express and courier services constitute specific services that are characterised by being essentially different from universal postal services'.[236] A second boundary on the range of universal services is established by weight. According to the Directive, universal service

**232** Postal Directive, Article 3(1).
**233** Postal Directive, Article 3(3).
**234** Third Postal Directive, Article 12.
**235** Directive 67/97, Recital 18.
**236** European Commission, *Communication pursuant to the second subparagraph of Article 251 (2) of the EC Treaty concerning the common position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services,* COM(2007)695 (9 Nov 2007), p. 5.

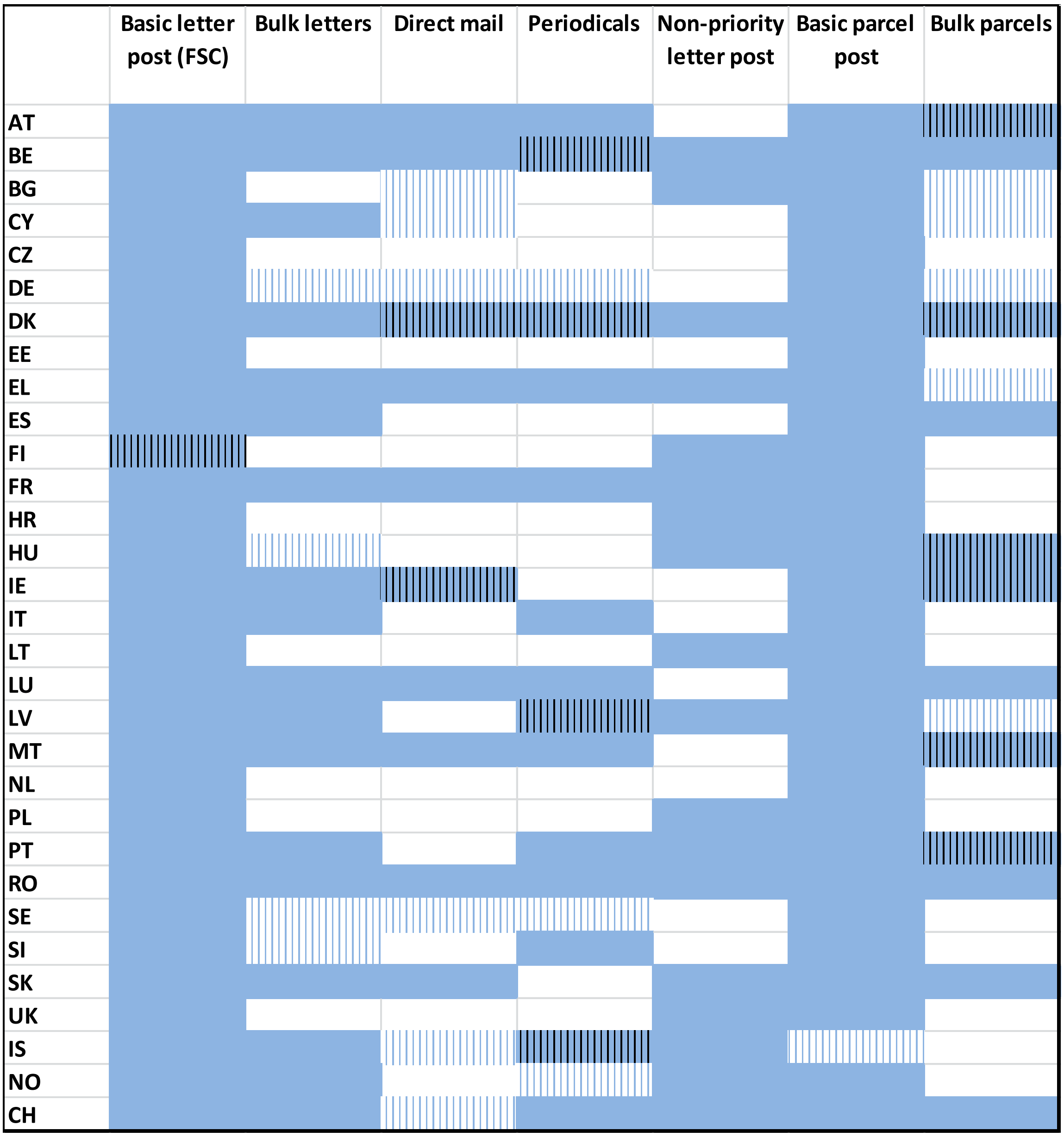
includes only parcels weighing up to 10 kg, although Member States may increase this limit up to 20 kg (most but not all Member States have done so).[237]

Within these bounds, Member States have discretion to denominate one or more categories of service as universal services. For example, one Member State may consider that it is sufficient to ensure nationwide provision of postal services designed for single piece documents and over-the-counter parcels because all mailers can communicate with all citizens using such services. Another Member State may consider that it also needs to ensure the nationwide provision of specialised services for documents and parcels sent in bulk.

In the present survey, we asked NRAs and USPs which postal services are ensured as universal services. The answers to these questions are summarised in Table 2-21. Remarkably, in 13 Member States, the NRA and the USP disagree on the scope of the universal service. In most cases, the USP has a broader view of universal service than the NRA, but it some cases it is the other way around. Perhaps the most interesting disagreement concerns the provision of priority single-piece letter post service in Finland. Although the Finnish NRA considers this service to be within the universal service, the Finnish UPS, Itella, disagrees and explains, ‘The universal service must include at least a letter service with intended delivery on the second weekday after the date of deposit, so the fastest category (first class letter) is not ensured as universal service, but if it is offered it is part of USO’. In other words, Itella maintains that its non-priority letter post service satisfies the minimum requirements of the Finnish universal service obligation, so the priority letter post service is an additional service which is provided voluntarily and could be withdrawn without affecting Itella’s obligations under the universal service obligation.

**237** Postal Directive, Article 3(5) further provides that ‘Member States shall ensure that postal parcels received from other Member States and weighing up to 20 kilograms are delivered within their territory’.

Table 2-21 Postal services within the universal service in each Member State




Source: WIK Survey

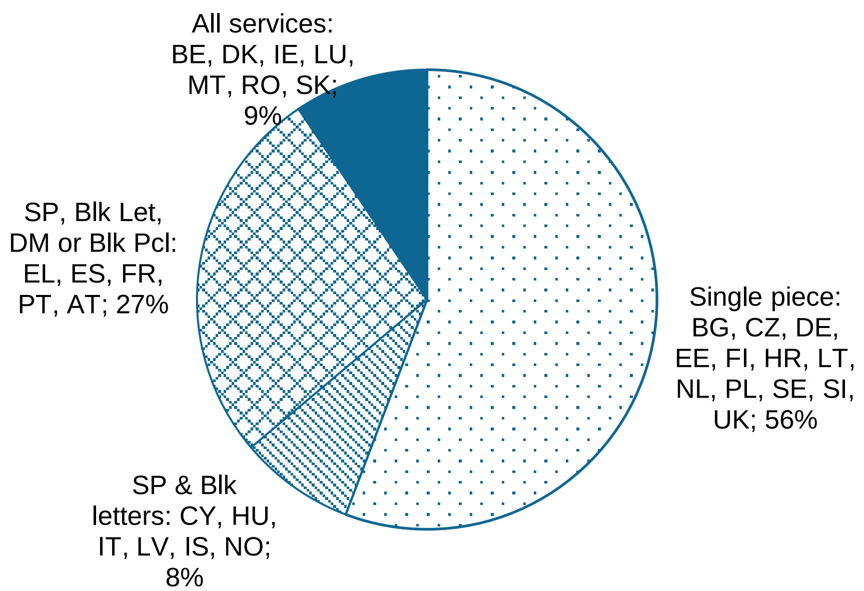
Key: Blue fill = universal service according to NRA. Blue fill with shading = USP disagrees with NRA designation as universal service. White space with shading = USP considers service to be universal service even though NRA does not.

As this table shows, there is substantial variation among Member State in the range of services considered to be universal services. Every Member State ensures two services as universal services: single-piece letter post service (either priority or non-priority) and single-piece parcel service. At the other extreme, if we rely on the statements of the NRAs, only 10 Member States (AT, BE, DK, EL, FR, IE, LU, MT, RO, SK), accounting for about 29 per cent of the EU/EEA letter post market, consider direct mail as part of

the universal service. Only 11 Member States (AT, BE, DK, ES, HU, IE, LU, MT, PT, RO, SK), accounting for 18 per cent of the EU/EEA letter post market, treat bulk parcel services as a universal service.

For clarification, Member States may be grouped according to the scope of universal service (again, relying on the statements of the NRAs). Eleven countries (BG, CZ, DE, EE, FI, LT, NL, PL, SE, SI, UK), accounting for about 56 per cent of the EU/EEA letter post market, adopt a minimalist approach and include single-piece letters and parcels in the universal service. In another 6 Member States (CY, HU, IT, LV, IS, NO) (8 per cent of the EU/EEA market), the universal service includes bulk letters as well as single-piece items.[238] Four more Member States (EL, ES, FR, PT) (27 per cent of the EU/EEA market) go beyond this basic coverage and include either direct mail or bulk parcels in the universal service obligation. Finally, 8 Member States (AT, BE, DK, IE, LU, MT, RO, SK) (9 per cent of the EU/EEA market) include essentially all non-express postal services in the universal service obligation.

Figure 2-10 Scope of universal service in EU/EEA as a whole




Source: WIK Survey

If these results are compared to the *Main Developments (2008-2010)* report,[239] it appears that there is a trend towards a more limited definition of the universal service obligation. Whereas in 2010, 20 Member States included bulk letters in the universal service, only 17 have done so in 2013. For direct mail, the number of Member State fell from 16 to 10; for periodicals from 16 to 13. Contrarily, however, the number of Member

**238** Norway includes in the universal service only bulk letters within the reserved area.
**239** Copenhagen Economics, *Main Developments (2008-2010)* (2010), p. 126.

State including bulk parcels in the universal service obligation has *increased* from 9 to 11. If the views of the USPs are accepted, the number of Member States including bulk parcels in the universal service might be as high as 16, although still only accounting for about one-third of the EU/EEA market

All Member States ensure a sufficient range of services to meet the minimum requirements for universal service established by the Postal Directive. Hence, all Member States have fully implemented the Directive is this respect. It should be noted, however, that the range of services denominated as universal services has substantial implications for compliance with the Directive in other respects. The broader the range of services included in the universal service, the broader the responsibility of the Member State to ensure cost-orientation, non-discrimination, transparency, service quality, etc., and the more difficult it becomes to reconcile regulation with the objective of full market opening.

### 2.5.2 Legal mechanisms for ensuring universal service

Under the Postal Directive, a Member State may ensure universal service using one of three legal mechanisms or a combination of such mechanisms. Recital 23 of the Third Postal Directive declared:

> Directive 97/67/EC established a preference for the provision of the universal service through the designation of universal service providers. Member States may require that the universal service be provided throughout the whole of the national territory. Greater competition and choice means that *Member States should be given further flexibility to determine the most efficient and appropriate mechanism* to guarantee the availability of the universal service, while respecting the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market. *Member States may apply one or a combination of the following: the provision of the universal service by market forces, the designation of one or several undertakings to provide different elements of the universal service or to cover different parts of the territory and public procurement of services*.
>
> *In the event that a Member State decides to designate* one or more undertakings for the provision of the universal service, or for the provision of the various components of the universal service, it must be ensured that quality requirements pertaining to the universal service are imposed in a transparent and proportionate manner on the universal service providers. Where a Member State designates more than one undertaking, it should

> ensure that there is no overlap in the universal service obligations. [emphasis added]

Thus, Member States are to determine the 'most efficient and appropriate' mechanism or combination of mechanisms for ensuring universal service. In so doing Member States must respect 'the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market'.[240]

To give effect to the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion, Member States must make a reasoned choice among these three legal mechanisms for ensuring universal service, taking into account national needs and conditions. In particular, the principles of proportionality and least market distortion require a Member State to refrain from introducing regulatory constraints greater than necessary to achieve the public objectives sought. Since reliance upon market forces requires the least regulatory intervention, the Postal Directive appears to imply that Member States should not secure universal service by designation or public procurement unless market forces cannot reasonably be relied upon.

Accordingly, the present survey asked Member States several questions to illuminate how they decided among the three legal mechanisms available for ensuring universal service in their national territories. We asked first whether the Member State had prepared a study that identified which of the three legal mechanisms set out in Recital 23 would most appropriately guarantee the availability of the universal service? Only 6 Member States (HU, MT, NL, PT, SE, SI) reported that they have undertaken such a study. Two of these studies highlight basic questions about how Member States should ensure universal service in the wake of the Third Postal Directive.[241] In addition, the Spanish competition authority, Comisión Nacional de la Competencia (CNC), has prepared a detailed analysis of inconsistencies between the designation procedures in the Spanish postal law of 2009 and the Postal Directive.

In late 2012, the Maltese NRA, Malta Communications Authority (MCA), undertook an exceptionally thorough public consultation on how to implement the Third Postal Directive. In its request for public comments, MCA stated that it intended to rely as much as possible upon market forces to ensure universal service:

---

**240** Recital 23 is consistent with the regulatory principles established to ensure universal service for electronic communications. Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, OJ L249, 17 Sep 2002, p. 21 ('Any national scheme pursuant to Directive 2002/22/EC, serving to share the net cost of the provision of universal service obligations shall be based on objective, transparent and non-discriminatory criteria and shall be consistent with the principle of proportionality and of least market distortion').

**241** Three NRAs (HU, PT, SI) refer to what appear to be non-public studies. The Dutch NRA refers to the explanatory memorandum to the 2009 act.

> MCA intends to continue to ensure the provision of the universal service via a combination of (A) reliance on market forces where it is feasible and appropriate to do so; and (B) the continued designation of MaltaPost as the universal service provider (and/or the designation of other universal service providers if necessary) to provide the universal service in circumstances in which the needs of users are not satisfactorily met by the market.[242]

In the end, the MCA concluded that it could not rely on market forces to provide much universal service. MCA states that Malta relies upon designation to ensure 99 per cent of the universal service and relies upon market forces for only 1 per cent of the universal service.

The Swedish NRA, PTS, cites concerns about potential abuse of dominant position to justify use of designation procedures to ensure universal service. In a 2009 report, PTS concluded as follows

> [A] prerequisite for state authority to refrain from appointing a provider of universal service is that the authority believes the market ensures that all requirements are met. . . . *In the opinion of PTS, to ensure the universal service it is not sufficient that the former postal monopolist currently provides the services included in the universal service in a satisfactory manner.* As long as there is no alternative provider, *to allow the incumbent to offer universal services without a formal designation would be to trust too much to the discretion of the operator*. This would, in turn, lead to a universal service that is not adequately secured.
>
> *Under current regulations, if a provider of the universal service is not designated, then it would have no obligation to follow the rules on cost-related prices and accounting* as required by the Postal Directive. PTS would lose its existing authority to immediately intervene through targeted action where the requirements of the Directive are not being followed. The competition in the letter area that remains today could quickly be eliminated.[243]

On the other hand, in a 2011 study, the Spanish NCA, CNC, concluded that the legislative designation of the Spanish public postal operator, Correos, as the USP for a fifteen year period was inconsistent with the Postal Directive. The NCA focused particularly on Article 4(2) of the Directive which provides that

> Member States may designate one or more undertakings as universal service providers in order that the whole of the national territory can be

**242** Malta, MCA, ‘Regulating the Postal Sector in a fully Liberalised Market: An ex-ante framework for the regulation of competition’ (MCA/C/1143/12, 1 Aug 2012), p. 6.

**243** Sweden, PTS, ’Partial report SOU 2009:82 A new postal law’ (Delbetänkande SOU 2009:82 En ny postlag) (11 Dec 2009), pp. 3-4 (emphasis added).

> covered. Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory. . . .In particular, *Member States shall take measures to ensure that the conditions under which universal services are entrusted are based on the principles of transparency, non-discrimination and proportionality*, thereby guaranteeing the continuity of the universal service provision, by taking into account the important role it plays in social and territorial cohesion. [emphasis added]

CNC concluded that the 2009 Spanish postal law was inconsistent with the Postal Directive in several respects, including in particular its use of designation procedures to ensure universal service:

> The Postal Law has not taken into account the distortions of competition pointed out in the IPN [legislative] report of the CNC in relation to the procedure for designating the UPS operator, which stressed that direct selection of Correos as designated operator throughout the country for the next 15 years implies:
>
> - The elimination of the possibility of introducing competition in the provision of the UPS [universal postal service] during an inordinately long time period.
> - *Breach of the 2008 Directive, which requires that the designation be based on an open and transparent procedure.* Nor is the designation subject to the type of periodic review also required by the EU rules.
> - *Neither the preamble to the law, nor the report accompanying its draft bill give a justification for the designation procedure or for the lengthy duration of the UPS monopoly*.
>
> The designation procedure may be considered discriminatory, in that *other postal operators have not been afforded the possibility of providing the UPS, not even in certain products and/or geographical zones*. It cannot be ruled out that, in certain geographical zones, other postal operators might have been interested in providing the service, possibly on better economic terms that would lighten the cost of this public service to taxpayers and introducing novelties that might enhance service quality. The lack of a competitive award process makes it impossible to know if Correos really is the entity that can deliver this service the most efficiently.[244]

**244** Spain, Comisión Nacional de la Competencia, *The new regulatory framework for the traditional postal sector in Spain* (Mar 2011), pp. 27-28.

Looming over all of these perspectives is the practice in Germany. Germany has not designated any postal operator as the USP. German postal law authorises the NRA, BNetzA, to provide for service if a lapse in universal service occurs in a specific area or circumstances. BNetzA may proceed either by designation or public procurement. So far, however, BNetzA has concluded that the Deutsche Post and other postal operators are providing adequate universal service in pursuit of their own commercial interest and that therefore a designation or public procurement is unnecessary. Thus, in contrast to the MCA, BNetzA has adopted the view that 'market forces' in the Postal Directive refers to situations in which the regulator may rely on the commercial self-interest of postal operators and not only to situations in which effective competition is present. In contrast to the situation in Sweden, German law provides that BNetzA may impose price, accounting, and pro-competitive controls upon the market dominant provider, Deutsche Post, even if Deutsche Post has not been designated as the USP. At the same time, CPC's criticism of the legislative designation of the Correos echoes, at least in part, the more limited, ad hoc approach to designation adopted by BNetzA.[245]

The appropriate *method* of ensuring universal service is closely related to the *need* for ensuring universal service. If, for example, the only portion of the national territory at risk of receiving service below those set by the universal service obligation is a small, remote island, then public procurement would appear to be a feasible option. If, on the other hand, the population as whole would lose universal service without State support, then the designation of a national USP may appear more necessary.

In seeking to understand how Member States have taken into account the relationship between the need for universal service support and the method of ensuring universal service, we asked whether Member States had undertaken studies to identify products or elements of universal service or portions of the national territory or groups of users for which there is a significant risk that a minimum level of universal service will not be provided by market forces. Only 3 Member States (HU, PT, NO) reported such a study.[246] We then asked NRAs to opine on products or geographic areas that might be at risk if market forces were relied upon to supply universal service and what percentage of the population could be affected. Typical answers are set out in Table 2-22.

---

**245** CNC's criticism for the legislative designation process in Spain was apparently affected by its admiration for the German postal law which CPC calls 'a benchmark for the rest of the EU countries.' CNC notes that Germany has not designated a USP and yet enjoys high quality universal service at prices which have been declining. Ibid., pp. 91, 94.

**246** However only one of these Member States identified a public document describing its analysis. Norway referred to an paper by K. Bergum, Director of Regulatory Affairs, Norway Post, 'The Universal Service Obligation – a strategic perspective on service level and cost' (2002). An updated version of this paper was published as K. Bergum, 'Calculating the Net Cost of the USO: a Practical Example from Norway' in M.A. Crew, P.R. Kleindorfer, and J.I. Campbell Jr., eds., *The Handbook of Worldwide Postal Reform* (2008).

Table 2-22 Universal service areas or products at risk under market forces

| Member State | Areas or products at risk under market forces | Per cent of pop. |
|---|---|---|
| BE | Registered items; some of packets and single piece items; regions with low density population; frequency of delivery. | |
| CZ | Sparsely populated areas, registered items, insured items, mail for the blind. | 5 |
| DE | None. | 0 |
| DK | Isolated rural areas and islands with few inhabitants | Unknown |
| EL | | 6 |
| ES | Unprofitable areas, in particular areas with low population density, e.g. in rural areas. | |
| FI | Delivery service would not be provided every working day in the sparsely populated areas (which cover 97 % of the land area of Finland and 16 % of the population). | 16 |
| HU | We suppose that the market forces would not provide universal service in the territories, where the density of the population is very low. | 40 |
| IT | For users or users groups who are based in remote areas | 0 |
| LT | Rural areas and services for the blind. | |
| PT | Single piece mail in some rural areas. | |
| RO | ANCOM considers that in Romania, there is no case for provision of some elements within the scope of Universal Service by market forces. | |
| SE | Special services for the blind and extended services for elderly or disabled people living in rural areas. | 0.03 |
| SI | Users or households on remote or sparsely populated areas | 20 |
| NO | Mail distribution and collection in rural areas (at an affordable price); Norway Post states that 5 per cent of the households will have mail service just 3 days a week, 100 per cent would have mail service just 5 days a week. (USO covers six days a week). | 100 |

Source: WIK Survey

From this table, it appears that most Member States could rely upon market forces — meaning the commercial self-interest of operators — to supply a basic level of universal service to the vast majority of the country. In most Member States, the risk of persons lacking basic universal service appears confined to relatively small populations living in thinly populated rural areas. However, there are exceptions. Romania and Norway suggest that 100 per cent of their populations would risk losing basic universal service if the State relied on market forces. Yet these two Member States represent opposite poles in the postal policy spectrum. Romania, with an average of only 22 postal item per capita per year, is almost at the bottom of the list of EU/EEA Member States in terms of mail density (rank 28 out of 30). It seems possible that a substantial portion of Romania would not receive 5-day per week universal service unless required by the Postal Directive. On the other hand, Norway, with 284 items per capital per year, is almost at the top of the list (rank 5 out of 30). Norway Post states that it would voluntarily deliver 5-day service to 95 per cent of the population. Nonetheless, Norway has adopted a universal service obligation that exceeds the requirements of the Directive and (according to the apparent judgement of Norway Post) the needs of mailers. In both States, it appears that universal service is not merely a supplemental program used to correct specific market failures but a nationwide public works contract of significant value. As the Spanish NCA has pointed out, using designation procedures to confer an economically valuable public contract on a single supplier without an objective and

impartial examination of the feasibility of competitive bids or regional designations appears inconsistent with the Article 4(2) of the Postal Directive. Of course, Romania and Norway are not isolated examples. Nor, in all likelihood, are they the most extreme examples of the difficulties that can arise when the universal service obligation and market forces are poorly aligned. Nonetheless, they do illustrate how the Postal Directive implies a weighing of the interrelationships between the means of ensuring universal service, the social need for universal service, and the definition of universal service.

It appears, however, that few Member States have engaged in such a balancing exercise. All Member States except Germany have designated a single postal operator as the universal service provider for the entire national territory. In all cases, the USP is public postal operator or its corporate successor. As noted above, Malta and Sweden have thoughtfully considered greater reliance on market forces and opted for a national USP designation based concerns for competitive fairness (which the German example suggests might be addressed in other ways). Other examples of a reasoned choice among the three legal mechanisms provided in Recital 23 may have escaped our survey. For the most part, however, it appears the Member States have so far failed to engage in the objective, transparent, and non-discriminatory analysis required by Recital 23 and Article 4(2) of the Postal Directive and, instead, have opted to use the universal service designation to continue some remnant of the former legal privileges of the public postal operators.

### 2.5.3 Regulation of prices and accounts

Under Article 12 of the Postal Directive, universal postal services must be affordable, transparent, non-discriminatory and cost-oriented. Although most Member States have fixed these principles in their national postal legislation, there does not seem to be a common understanding amongst NRAs in the survey countries on the definition of these principles. The Directive leaves it to Member States to develop their understanding of the principles of affordability, non-discrimination, and transparency. The Directive provides more guidance on cost-orientation which will be described in section 2.5.4. Even though the Directive does not require price regulation apart from cost orientation, all Member States apply some kind of price control (cf. section 2.5.5). In section 2.5.6, developments in regulatory accounting practice are described.

### 2.5.4 Tariff principles

The Postal Directive requires that prices have to be affordable, cost-oriented, transparent and non-discriminatory (Art. 12 of the Postal Directive). Among these principles, *affordability* seems to be hardest to comprehend (see case study below on affordability in the UK). However, studies or analysis on affordability issues are rather the exception than the rule which may be an expression of the relative importance that

Member States allocate to affordability in light of, by tendency, decreasing use of postal services especially by private consumers and the annual expenditure level for basic postal services in comparison to some other services (e.g. mobile telecommunications).

Case study 2-11 Definition of affordability (UK)

In lack of a clear definition, Postcomm defined in 2011 the opposite of affordability:

> 'A universal postal service product, for example, a First Class stamp, would be 'unaffordable' if a potential residential customer was entirely excluded from purchasing it or faced significant hardship from purchasing it because of the price.'[247]

However, as Ofcom points out, little spend on postal services by certain user groups does not mean postal services are affordable to them – users could still be economically impaired by their spend on postal services.[248] Thus, the approach takes into account the consequences for users of sending a postal item at the price applied by a postal operator or not to send a postal items because of its price. The approach also reflects that affordability may not be equal for all users of a certain group but takes more individual circumstances into account.

Independently from how affordability is defined, not all NRAs test in practice if prices are affordable (according to Copenhagen Economics' study on the pricing behaviour of postal operators, these are NRAs in EL, FI, HU, LT, LU, LV, RO, CH).[249] Those NRAs who test affordability apply a range of different methods.[250] The most common method seem to be price caps which ensures at least that price changes do not lead to unaffordability but does not test whether price levels are affordable. Other methods for testing affordability are comparisons with consumer price indices, consumer surveys, and multi-criteria assessments.

The Directive requires Member States to ensure that prices are *cost-oriented*.[251] Apart from affordability which aims at ensuring access for all users to postal services, this principle aims at ensuring that prices are neither excessive, i.e. harmful to customers nor predatory, i.e. harmful to competition. Cost-orientation can be determined at different levels of detail. Cost-orientation can be measured at the level of an individual service which would comprise all weight and format steps as well (e.g. first class letter mail) but can also be defined broader (e.g. for a basket of services such as first and second class letter mail) or for individual prices inside a certain service (e.g. 20g letter in first class service).

**247** United Kingdom, Postcomm, 'The building blocks for a sustainable postal service Universal service - Discussion paper on affordability' (Feb 2011).
**248** United Kingdom, Ofcom, 'The affordability of universal postal services, Report on findings of 19 March 2013, p. 11 f.
**249** Cf. Copenhagen Economics, *Pricing behaviour of postal operators* (21 Dec 2012), p. 196. There was no answer from BG, CY, DK, IS, LI.
**250** Cf. ibid.
**251** If not stated otherwise, the analysis on cost-orientation is based on Copenhagen Economics, *Pricing behaviour of postal operators* (2012).

NRAs seem to apply the principle of cost-orientation quite differently. They measure cost-orientation on different levels: while six countries (representing 10% of the EU postal market) measure cost-orientation on the level of individual prices, twelve Member States (representing 28% of the market) measure at the level of services and nine countries (more than 50% of the market) measure at the level of service baskets.[252] Similarly, NRAs do not use a common approach for testing whether prices are cost-oriented. Five NRAs regard price caps as sufficient to ensure cost-orientation,[253] while others monitor specific criteria for cost-orientation or perform other tests. Nine NRAs do not seem to apply formal tests. These finding may, but need not, be in conflict with the statements of NRAs to measure cost-orientation on the level of individual prices (EL, ES), for certain services (LU, PL) or for baskets of services (EE, HU, IT).

NRAs also seem to have no common approach upon ensuring *transparency* of prices, required by Art. 12 fourth indent of the Postal Directive. Twelve Member States and CH have not defined any criteria for transparency (BE, EE, EL, FI, HU, LU, LV, MT, NL, NO, PL, SI).[254] However, the majority of these thirteen countries ensures transparency in practice, mainly by requiring the USP to publish prices. This practice is in line with CERP's recommendation to oblige USPs to publish prices and service conditions to ensure transparency and non-discrimination.[255] The exceptions are HU, NL and CH where thus neither transparency criteria are defined nor any special measures are taken by NRAs to ensure transparency.

The question remains whether NRAs ensure transparency for all prices or only for certain services, such as single piece prices or services inside the universal service area. NRAs in seven Member States (DK, EE, ES, FI, HU, LU, SK) and NO, CH, HR do not have full information on all special tariffs which are subject to regulatory control of the NRA (cf. section 2.2.4 on downstream access).[256]

There is a wide range of potential criteria to define *non-discrimination* of tariffs, e.g. geographical distribution, volumes, level of pre-sortation, or access for certain user groups. Therefore, in order to ensure non-discrimination, NRAs should have a clear idea under which circumstances different prices for conveyance of postal items are due to differences in costs and when it is not. In Member States representing half of the EU market, criteria for non-discrimination are defined (AT, DE, EL, ES, FI, IT, LT; NL; PT; RO, SE, SK). In ten Member States, representing 27% of the EU postal market, plus

---

**252** Market data are based on WIK's research.
**253** This, however, is only true if the overall level of prices is cost-oriented. This is e.g. the case for the price cap system in the Netherlands, cf. section 2.5.5.
**254** According to ibid., p. 206. The question was not answered by BG, CY, DK, IS, LI and UK.
**255** Cf. European Committee for Postal Regulation (CERP), *Recommendation on best Practices for Price Regulation* (2 Oct 2009), PL 2009/2 Doc 5 (2 Oct 2009).
**256** Source: WIK Survey.

two other survey countries there is no definition of non-discriminatory tariffs (BE, CZ, EE, FR, JU, LU, LV, MT, PL, SI and CH, NO).[257]

Although in twelve survey countries a definition of non-discrimination is lacking, NRAs in almost all of these countries nevertheless take measures to ensure non-discriminatory tariffs with the exception of HU. NRAs apply a wide scope of measures ranging from ex ante price approval and publishing to ex post measures and monitoring details of individually negotiated agreements.[258] However, it is not clear whether NRAs ensure non-discrimination of *all* tariffs. Especially non-discrimination between user groups is very hard to discover since market dominant operators may foreclose access to certain tariffs with more subtle methods than direct discrimination. This is illustrated by the case of Deutsche Post's subsidiary First Mail whose tariffs for business customers were deemed to be discriminatory in a decision of the German regulatory authority).

Case study 2-12 Ex post regulation of predatory prices offered by a subsidiary of Deutsche Post (First Mail)

In June 2011, the German NRA, Bundesnetzagentur, condemned the pricing policies of a subsidiary of Deutsche Post, First Mail, as discriminatory and anticompetitive. First Mail is fully owned by Deutsche Post. First Mail offered regional letter services for business customers using a separate delivery from that of Deutsche Post. First Mail served densely populated areas in Germany where private postal service providers operated as well. The private operators accused First Mail of setting prices too low and hindering competition.

Bundesnetzagentur held that First Mail's prices did not comply with price standards established by the German postal law. In its decision, the NRA concluded that prices offered by a subsidiary of a regulated firm cannot be assessed separately, but that Deutsche Post and its subsidiary should be considered a one entity. First Mail's were found to be discriminatory because Deutsche Post offered senders different prices depending on whether they used the services of Deutsche Post directly or those of its subsidiary First Mail. Bundesnetzagentur was also convinced that the prices of First Mail were predatory because the price difference between First Mail and Deutsche Post was not explained by a difference in service. Bundesnetzagentur found that First Mail offered essentially the same services as Deutsche Post. The regulator rejected First Mail's price calculation which failed to allow for either profits or overhead costs (such as costs for accounting, marketing and IT services) although Deutsche Post supplied these overhead services to First Mail. A proper calculation including contributions to profit and overhead cost would have resulted in financial losses of First Mail since its market entry. Bundesnetzagentur concluded that Deutsche Post established First Mail to hinder competition, pointing out that First Mail's delivery network was economically inefficient and that First Mail was operating only in those areas served by the Deutsche Post 's strongest competitors, TNT and PIN Mail.

First Mail was obliged to set prices no lower than prices for downstream access at the inward mail centre of Deutsche Post. As a consequence of the Bundesnetzagentur decision, Deutsche Post closed down First Mail's operations at the end of 2011.

**257** Copenhagen Economics, *Pricing behaviour of postal operators* (2012), p. 207. There was no answer from BG, CY, DK, IE, UK as well as from IS and LI.

**258** Cf. ibid.

## 2.5.5 Methods for price control

Ex ante and ex post price control methods are used to a different extent in the survey countries. Member States rely much more on ex ante price regulation than on ex post control (cf. Table 2-23). Ex ante approval are applied in a considerable higher number of survey countries, single piece postal items (letters and parcels) being the services most often subject to ex ante control. Single piece letters are approved ex ante in twelve Member States (representing 12% of the EU postal market), price caps for this service are applied in nine countries (corresponding to 63% of the market), and ex post control is applied in three Nordic countries and HU.

Table 2-23 Methods of price regulation

| | **Single piece letters** | **Bulk letters** | **Direct mail** | **Newspapers, magazines** | **Non-prio correspondence** | **Single piece parcels** | **Bulk parcels** |
|---|---|---|---|---|---|---|---|
| Ex ante approval | AT, BG, CY, EL, ES, IE, LT, LU, LV, MT***, RO, SI, SK, IS* | AT, CY, EL, LU, LV, MT***, RO, SK, IS | AT, CY, EL, MT***, RO, SK | AT, EL, FR, MT***, RO, SI, CH | BG, EL, LT, LV, RO, SK, IS | AT, BG, CY, EL, ES, LT, LU, LV, MT***, RO, SI, SK | AT, EL, MT***, RO, SK |
| Price cap | AT, BE, DE**, EE, FR, HU, IT, NL, PL, PT, NO | FR, IT, PT, NO | FR, PT | IT, NO | BE, FR, HU, PL, UK | BE, EE, FR, IT, NL, PL, PT, NO | FR |
| Ex post control | DK, FI, HU, SE | DE, ES, SE | DE, DK, SE | DE, SE, SK | DK, FI, SE | DE, DK, FI, HU, SE | DK, ES, HU, SE |

Source: WIK survey

Notes: *Only within the reserved area (items of correspondence of up to 50g); **Price cap only for services of a market dominant incumbent, otherwise ex post; ***Ex ante approval for services of a market dominant incumbent, otherwise price cap; PT: prices for items of correspondence and direct mail up to 50 g are subject to a price cap, all other prices are controlled ex post; HU: price cap for items of correspondence up to 50g in single piece service and conveyance of official documents

The broad application of ex ante approvals for single piece and bulk postal items is explained by its ability to prevent excessive as well as predatory prices.[259] But the burden of ex ante approval on regulators and postal operators is highest of all three methods (especially when individual tariffs are approved). On the contrary, commercial freedom, which might be of increasing importance in changing market conditions (i.e. declining volumes), is lowest. The goal to equip Royal Mail with greater pricing flexibility led Ofcom to the decision to limit the scope of ex ante price regulation in the UK.

Ex ante price regulation is therefore applied where market forces do not act as a corrective on a strong or even market dominant position or where emerging competition

**259** Ex ante approval may also prevent cross-subsidisation between services for which competition is low (risk of excessive prices) and services for which competition is higher (risk of predatory pricing). For a detailed overview of the advantages and disadvantages of ex ante price regulation, cf. CERP (2009), Recommendation on best Practices for Price Regulation, October 2nd 2009 and Copenhagen Economics (2012), Pricing behaviour of postal operators.

(especially for bulk correspondence and direct mail) might be damaged by too low prices.

**Case study 2-13 Limit ex ante regulation to consumer products (UK)**

Under the new regulatory framework established by the Postal Service Act 2100 and effective in April 2012, the UK NRA, Ofcom has substantially reduced the scope of ex ante price regulation. The goal is to give Royal Mail greater pricing flexibility in order to sustain its financial viability and ensure the provision of universal service. To protect the affordability of universal services for elderly people and low income customers, Ofcom introduced a cap on prices for second class mail products weighing up to 2 kg.

Ofcom's decision to introduce a price cap for second class products only was based on research into customer needs by Postcomm and Consumer Focus. According to the latter, most consumer mail does not need to arrive on the next day, allowing consumers to switch at least for part of their mail to second class products. Even though most customers currently use first class letters, Ofcom decided against a cap on first class stamps in light of these findings. Furthermore, the pricing flexibility of Royal Mail would have been significantly affected if first class products were included in the price cap.

Starting with fiscal year 2012/2013, the new price cap for second class mail allows for price increases up to 53% in 2012/2013. This corresponds to a stamp price increase for a 100g letter from 36p to 55p. After that, prices for these products may rise in accordance with consumer price index for the rest of the price cap period which totals seven years.

The main function of price caps is to prevent excessive prices. They are therefore rarely applied for services such as bulk letters and direct mail which are typically offered to business customers and for whom competition is emerging in a number of countries. Price caps are mainly applied to single piece letters and parcels (cf. Table 2-23). Several countries apply other price control measures in addition to price caps: in NL, cost-orientation of the tariffs within the price cap is determined every four years; in e.g. AT, prices within the price cap can additionally be controlled ex post any time; in FR, the NRA may interdict price changes within the cap if tariff principles are not respected.[260] There are currently two countries where the price regulation system is under reform. IE is planning to implement a price cap by the end of 2013.[261] In PT, the NRA is currently in the process of defining criteria for setting universal service prices. Until these criteria are defined, the former price control system remains in place: formerly reserved services (items of correspondence of up to 50g and 2.5 times minimum tariff) are controlled by a price cap, for all other services (including newspapers and parcels services) CTT has to announce price changes in advance which ANACOM may reject either ex ante or ex post entering into force.

**260** Source: NRA questionnaire.

**261** A consultation on the design of the price cap mechanism is expected to start in the third quarter of 2013. Cf. Comreg (2013), An Post's price application: Response to Consultation and ComReg's consent to change the charges of certain postal services within the scope of the universal postal service relating to postal packets weighing less than 50 grams, ComReg 13/21, 01/03/2013.

Price caps bear the advantage of a reduced regulatory burden while granting the operator at least some commercial freedom. If the cap is applied to a basket of services, the USP may distribute price changes freely within the basket. Price caps may provide incentives to improve efficient service provision by including an efficiency factor in the price cap formula. Yet, price caps inherit the risk that the parameters chosen do not reflect market developments appropriately - especially during periods of declining mail volumes. Volumes declines on the one hand increase average costs per piece, increasing the need for price adaptions. On the other hand, the ability of the postal service provider to enhance its prices is limited because of the risk to fuel substitution to electronic alternatives even further. In DE, these uncertainties about future volume developments incited Bundesnetzagentur to shorten the price cap period.

Case study 2-14 Shorter price cap periods due to uncertainty of future volume developments (DE)

The German NRA, Bundesnetzagentur, has limited the current price cap period, which began in 2012, to two years, unlike previous price cap periods. The regulator rejected Deutsche Post's request to adopt a term of four years as in previous price caps. The Bundesnetzagentur concluded that data on letter volume developments did not corroborate Deutsche Post's thesis that volumes would decrease massively due to, among other factors, Deutsche Post's own electronic communication service 'E-Postbrief'. Given uncertainties on future volume developments, Bundesnetzagentur shortened the price cap period in order to be able to reassess the price cap decision after two years in light of more recent information on volume developments.

In FR, on the contrary, ARCEP approved higher limits for price changes than in previous price cap periods due to expected falling revenues of the regulated services. A similar approach was taken by Ofcom who decided to grant Royal Mail more pricing flexibility in order to be able to react to changing market conditions.

Case study 2-15 Price cap decision 2013-2015 in light of volume developments (France)

In the price cap period from 2013 to 2015, the French NRA, ARCEP, has allowed La Poste significantly higher price increases than in the previous period (2009 to 2011). La Poste may increase its prices up to 1% above consumer price increases while in the previous period the ceiling was set at 0,3% above the consumer price index. The decision is based on forecasted volume declines until 2015 averaging 4.1% per year. The volumes projections took into account variations in revenues per product. ARCEP may introduce a positive or negative adjustment in the second and third year of the period if the development of volumes and revenues differs from the forecast. Taking into account the general uncertainty of forecasts, the adjustment is limited and not implemented in full. This adjustment factor does not apply automatically. Its application depends upon approval by ARCEP.

Case study 2-16 More pricing flexibility for Royal Mail (UK)

Within the new regulatory framework that came into effect in April 2012, Ofcom pursued the objective to give Royal Mail greater pricing flexibility. Given Royal Mail's poor financial situation and the threatening non-sustainability of the universal service, the return to a commercially viable situation was given a high priority. Ofcom thus decided to abandon the Postcomm approach of tight regulatory control which in Ofcom's view did not yield the results expected, especially failed to incentivise Royal Mail to improve its efficiency.

Ofcom argues that Royal Mail is facing strong challenges from the market, i.e. volume declines and changes in the structure of mail demand. Under the former regulatory framework, Royal Mail was not able to react adequately to these changes, maintain financial viability, and failed to reach Postcomm's as well as its own efficiency targets.

Ofcom decided therefore to remove price regulation of Royal Mail's postal services in order to give Royal Mail more commercial freedom, allowing it to take actions necessary under the current market conditions to achieve a stronger economic position. At the same time, Ofcom installed three main safeguards. The objective of these safeguards is to ensure that Royal Mail improves its efficiency and does not primarily rely on price increases to improve its situation. First, monitoring Royal Mail's performance (quality of service, efficiency and affordability), second, a price cap for 2nd class letter products as a safeguard cap for vulnerable customers, and third, promoting competition, mainly by obliging Royal Mail to offer downstream access for postal services with a routing time of D+2.

### 2.5.6 Regulatory accounting

In Article 14, the Postal Directive determines accounting rules for regulatory purposes (which are to be distinguished from financial and internal cost accounting) for universal service providers. According to Article 14, USP shall keep separate accounts for universal services and other services. Further, the Article determines how costs shall be allocated to these accounts. Apart from costs which can be directly assigned to a product or service, there are four provisions on the allocation of common costs.

First, common costs shall be allocated a direct analysis of the origin of these costs. Second, wherever this is not possible, the allocation shall follow an indirect linkage to another cost category or group of cost categories for which direct linkage is possible. Third, for services for which neither of these two options is possible, common costs shall be allocated on the basis of a general allocator expressing the ratio of 'all expenses directly or indirectly assigned or allocated' and 'each of the universal services' (Art. 14 (3) (b) (iii) of the Directive). Fourth, the Article stipulates an 'appropriate' allocation of common costs which are necessary for the provision of both universal and non-universal services.

Regulatory accounts shall provide information for several purposes:[262]

- to enable NRAs to adopt decisions related to the universal service,
- for calculation of net costs of the universal service obligation,
- to ensure that universal service tariffs comply with the tariff principles of Art. 12,
- to ensure compliance with the principles on terminal dues,
- to monitor fair market conditions.

Due to this broad range of applications of regulatory accounting information, NRAs may have the need to require specific information from regulatory accounting. Therefore, it is important for them to be able to determine the *scope of regulatory accounting* and the ability to specify cost allocation rules. Only a minority of NRAs does not have this power, although research on this issue has yielded different outcomes: in a report by Copenhagen Economics, five out of 25 NRAs responded that they could not specify the scope of regulatory accounts while two out of 23 NRAs said so in a report on cost allocation by ERGP.[263] Even if NRAs do have the power to determine the scope and further the rules of cost allocation, to enforce changes in cost allocation may prove to be a longsome process, as the example of dispute on allocation of delivery costs in SE shows (see case study below).

Case study 2-17 Distribution of delivery costs between first and second class (SE)

Posten's prices for universal services have to be cost-oriented. For (ex post) control of cost-orientation, Posten uses a Stand Alone Cost-model for the calculation of costs for first and second class letter services in two theoretically separate networks. In its decision of 8 November 2010,[264] PTS obliged Posten to adapt its Stand Alone Cost-model: Posten had to increase the allocation of delivery days for economy letters from 2 to 2.5 days.

The delivery costs for first class letter services in the Stand Alone Cost-model Posten used in 2010 were based on five out of five delivery days, corresponding to the legal obligation to deliver five days per week. The delivery costs for second class letter services were based on the assumption that second class letter services are delivered twice per week, i.e. two out of five delivery days. Consequently, second class letters only had to bear 2/5 (40%) of delivery costs. In the view of PTS, this allocation of costs does not take into account the reality where second class letter service has in fact larger volumes than first class letter services. PTS found that allocating only 40% of delivery costs contradicts the principle of causality laid down in the European Postal Directive. PTS showed in its decision that delivering twice per week would result, for some part of the mail, in either breaching the transit time goal of D+3 for second class letters or significantly undercutting it, resulting in D+1 service for a second class price.

**262** Directive 2008/06/EC, Recital 41.
**263** In Copenhagen's study these NRAs were: AT, BE, ES, NL and NO. Copenhagen Economics, *Pricing behaviour of postal operators* (2012), p. 221 and European Regulators Group for Postal Services, *Common Position on Cost Allocation Rules*, ERGP (12) 28 Rev. 1 (23 May 2013), p. 9.
**264** Sweden, PTS, 'Föreläggande om rättelse av Posten AB:s kalkylmodell' (8 Nov 2010).

Therefore, PTS decided that a cost-calculation based on delivering every second working day was the only way for Posten to guarantee second class letter service with D+3. For a two week-period, this would result in delivering twice per week in the first week and thrice in the second, averaging 2.5 delivery days.

Posten filed a complaint against this decision and provided additional information on delivery costs for second class services. PTS then withdraw the decision and is currently investigating the material provided by Posten.

It is quite clear from the Directive that the scope of regulatory accounting of the designated universal service provider(s) should also cover non-universal services.[265] The Directive makes provisions for the allocation of common costs 'which cannot be directly assigned to a particular service or product'. Examples for such common costs are delivery or collection networks which typically serve universal services as well as non-universal services. Wherever universal services share activities of the postal value chain with non-universal services, the scope of regulatory accounting should thus cover also services outside the universal service area. In the majority of the Member States and other survey countries, regulatory accounts comprise also non-universal services or even non-postal services (such as unaddressed items). A total number of ten Member States does not provide detailed regulatory accounts outside the universal service area but content themselves with aggregating services outside the USO (BE, EE, ES, FI, IT, LT; NL, PT, RO, SI).[266] In these cases, NRAs do not have an overview which costs are allocated to specific services outside the USO. This may enhance the risk for cross-subsidisation between universal and non-universal services.

The main *cost basis* that is used for regulatory accounting are historical costs (as opposed to current costs).[267] Current costs are applied in FI only.[268] Its low application results from the complexity of necessary adaptions of historical costs. Therefore, CERP does not regard an approach based on current costs as 'not normally appropriate'.[269] The great majority of NRAs uses a cost basis based on activities which are necessary for providing postal services (universal and also non-universal, if the activities cannot be split between services within and outside the universal service area).[270] Activity based costing implies that a business process of producing a postal service is broken down to basic activities for 'a limited set of products/services that are treated homogeneously'[271]. The costs for carrying out a certain activity can then be determined by measuring the consumption of resources by this activity.

**265** Cf. European Regulators Group for Postal Services, Report on Common Costs Allocation, August 2012, p. 9-10.
**266** Copenhagen Economics, *Pricing behaviour of postal operators* (2012), p. 222. No answer by BG, CY, DK, UK, IS, LI.
**267** Cf. ibid and ERGP (2012), ERGP Report on Common Costs Allocation, August 2012, p. 7.
**268** Copenhagen Economics, *Pricing behaviour of postal operators* (2012), p. 222.
**269** CERP (2009), Recommendation on best Practices for Cost Accounting Rules III, p. 11.
**270** Cf. ERGP (2012), ERGP Report on Common Costs Allocation, August 2012, p. 7. This result of ERGP is supported by Copenhagen Economics, *Pricing behaviour of postal operators* (2012), p. 222.
**271** ERGP (2012), ERGP Report on Common Costs Allocation, August 2012, p. 12.

However, activity based costing does not provide an easy answer to common cost allocation. In the labour-intensive postal sector, payroll records need to be allocated to activities, which is especially challenging for employees in positions that may not or only partly be attributed to the postal production process, e.g. administration, IT support, or finance. NRAs use different *methods for common cost allocation* which may but need not be based on activity based costing.[272] The most widespread methodology seems to be equi-proportional mark-up (EPMU) where common costs are allocated according to the proportion of the service costs on total costs. This method is easy to implement and used by a total of sixteen survey countries (AT, BE, CZ, DE, FR, IE, LT, MT, NL, PL, PT; RO, SE, SI, SK and CH).[273] EPMU results by definition in full allocation of costs and is therefore consistent with Art. 14 (3) (b) (iii) of the Directive. The backside of EPMU is that the cost allocation does not mirror real usage of resources by services.

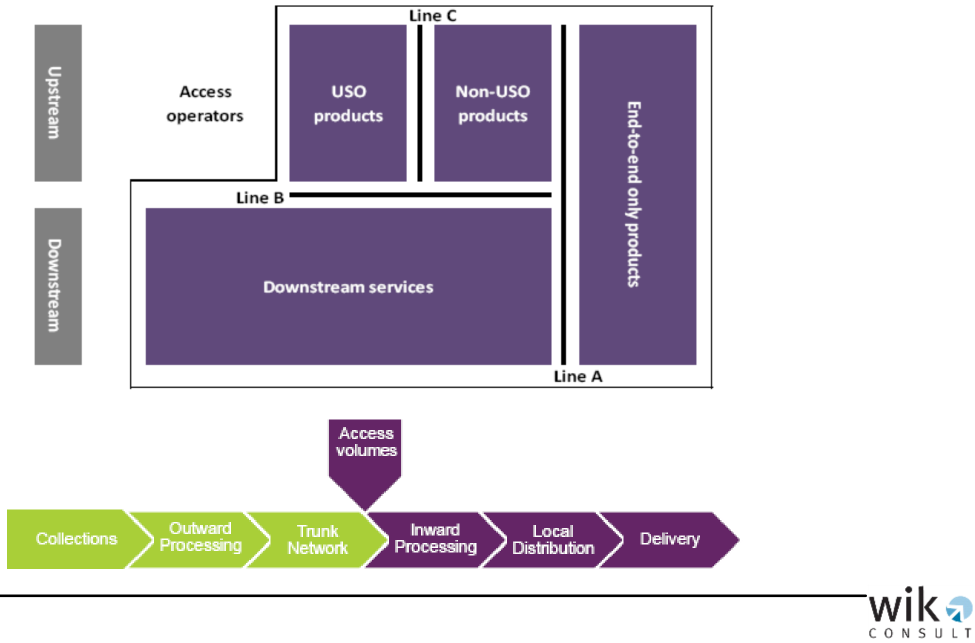
A better picture on the true costs of a services may be drawn if the approach of long run (average) incremental costs (LRIC) is chosen. The main difference between a fully allocated cost approach like EPMU and LRIC lies in the treatment of common costs.[274] LRIC are the incremental costs of a service (or other increment) provided by an existing operator. They are determined as the total costs of a provider (including provision of the increment) minus the stand alone costs of the provider without provision of the increment. Thus, non-attributable common costs are not included in the LRIC. LRIC are used in addition to EPMU in DE, and as the only approach to common cost allocation in ES and LU. It remains unclear how NRAs in these two countries ensure full allocation of costs as requested by the Directive. In addition to EPMU and LRIC, the German NRA also uses Ramsey pricing principles; eight survey countries use also or solely other methods.[275]

In general, cost allocation methods are not made *transparent* by most NRAs. Only five NRAs (EL, FR, IE, LV and NO) publish which cost allocation method they use.[276]

**272** According to European Committee for Postal Regulation (CERP), *Recommendation on best Practices for Price Regulation* (2 Oct 2009), PL 2009/2 Doc 5 (2 Oct 2009), p. 13, both EPMU and LRIC cost allocation may be founded on activity based costing.
**273** Cf. Copenhagen Economics*, Pricing behaviour of postal operators* (2012), p. 224. No answer by BG, CY, DK, IT, LV, UK and IS, LI.
**274** Cf. for the following Frontier Economics, *Study on the principles used to calculate the net costs of the postal USO, A Report prepared for the European Commission* (Jan 2013).
**275** These are NRAs in: AT, CZ, EE, EL, FI, HU, SE and NO. Cf ibid.
**276** Copenhagen Economics, *Pricing behaviour of postal operators* (2012), p. 226.

Case study 2-18 Disclosure of activity costs in regulatory cost accounting (France and UK)

The structure of regulatory financial reporting is classified as confidential information in many Member States. However, there are some good examples of transparent guidelines for regulatory accounts: For example, NRAs in FR and UK have made transparent the structure of regulatory financial reporting of the regulated USP, by publishing templates for regulatory cost accounting. In both FR and UK, regulatory accounts are structured, among other criteria, according to activities along the postal value chain.




Source: Ofcom, Statement Securing the Universal Postal Service: Decision on the new regulatory framework

OFCOM goes beyond the basic separation between universal and non-universal services by establishing four divisions of Royal Mail's regulated business for which regulatory accounts are defined (illustrated by the picture above). 'End-to-end only products' contains accounts for those products which are in competition with postal services from operators not demanding access to Royal Mail's network. For products competing with access operators, OFCOM defines different divisions on the upstream and downstream side. The dividing line is at the inward mail centre where inward sorting is performed (access to the outward mail centre does not fall under 'access' as defined by OFCOM). The purpose of this division is to monitor whether there is price discrimination between external customers and Royal Mail's own retail products including universal services. On the upstream side, OFCOM further differentiates between USO retail products and non-USO products since the legal framework sets up specific requirements for universal services (such as quality requirements, affordability and uniform tariffs). For those products which use services from other divisions (e.g. USO products using downstream services), OFCOM has defined transfer prices.

In FR, where substantial upstream competition has not (yet) developed, ARCEP follows a different approach: Major reporting segments are letter post (including letters, addressed direct mail products, subsidised newspapers and magazines), as well as parcels and other services (subdivided into post office services, financial services and others). For each of these segments, revenues and costs shall be broken down according to seven successive rules. One of these rules requires allocation of costs according to six activities: (1) counter activities,

(2) collection, (3) processing and trunk network, (4) transport to delivery offices, (5) in-door delivery activities (within delivery office), (6) street delivery activities.

Source: ARCEP (2012), Décision n° 2012-0207 de l'Autorité de régulation des communications électroniques et des postes en date du 14 février 2012 relative aux restitutions comptables réglementaires de La Poste ; ARCEP (2010), Description du système de comptabilité analytique réglementaire de La Poste, Avril 2010 ; Ofcom, Statement Securing the Universal Postal Service, Decision on the new regulatory framework, 27 March 2012, Annex 11 Direction: Regulatory Accounting Guidelines.

### 2.5.7 Net cost of universal service obligations

In 2008, the Third Postal Directive added a new Annex I to the Postal Directive that summarises a method of calculating the 'net cost, if any, of universal service'. The calculations described in Annex I are to be followed in the event that a Member State determines that 'the universal service obligations, as provided for in this Directive, entail a net cost' and 'represent an unfair financial burden'. The net cost calculations envisioned in the Directive raise difficult economic and policy issues. It should be noted, however, that these issues arise only to the extent that a Member State relies upon the designation of USP to ensure the universal service. Neither market forces or public procurement present issues of uncompensated costs incurred in the provision of universal service.

In January 2013, Frontier Economics completed a study for the Commission on the principles used by NRAs and USPs in the calculation of the net cost of the universal service obligation (hereafter, 'Frontier Study').[277] The Frontier Study describes three significantly different methods of calculation that have been used by USPs and NRAs to calculate the net cost of the universal service obligation since before adoption of the Third Postal Directive: (1) Deficit Approach (DA), (2) Net Avoidable Cost (NAC), and (3) Profitability Cost Approach (PC). See Table 2-24.

Table 2-24 Methods of estimating of the net cost of the USO (Frontier Economics)

| | |
|---|---|
| Deficit Approach | The sum of losses of loss making USO products netted off by the profits of profitable USO products, as reported in the USP accounts. |
| Net Avoidable Cost | The sum of the loss-making USO products, where a product in this context is broken down in elements of products along a number of dimensions. (e.g. format, delivery zone, type of sender, class). This approach put emphasis on the fact that the net cost arises from the joint obligation of charging a product at a geographically uniform price. |
| Profitability Cost Approach | The net cost of the USO is measured as the difference between a USP's profit level with and without USO in a liberalised market. The Profitability Cost can also be expressed as the net avoidable costs – given by the sum of the change in incremental costs and the change in revenues. |

Source: Frontier Economics (2013), p. 4, table 2.

277 Frontier Economics, *Study on the principles used to calculate the net costs of the postal USO* (2013).

The Frontier Study does not offer specific conclusions regarding of which method is most accurate or consistent with the Postal Directive. However, the study evaluates the strengths and weaknesses of each approach. In particular, the PC method is derived from oft-cited and highly influential analyses of the issue by economists John Panzar and Helmuth Cremer.[278] The Frontier Study concludes that 'the most common method chosen for calculating the net cost of the USO is the PC approach' and 'the on-going and most recent estimations of the net cost of the USO have tended to be under the PC approach'.[279] In a subsequent study for the Irish NRA, Frontier recommended the PC approach for calculating the net cost of the universal service obligation in Ireland.[280]

In 2011, Copenhagen Economics prepared a study for the Finnish NRA, Ficora, on the calculation of the net cost of the universal service obligation. Copenhagen Economics concluded that what it called the 'commercial approach' was most consistent with Annex I of the Postal Directive:

> In the first part, we identify the commercial model as being the best method. This choice is reached based on criteria from the Third Postal Directive and the Finnish Postal Act, as well as recommendations and industry best practice contained in guidelines for calculating the net cost of the USO provided by The European Committee of Postal Regulators.[281]

The 'commercial approach' of Copenhagen Economics is a generalisation of the 'alternative commercial strategy' method for calculating the net cost of universal service developed by Kristin Bergum and colleagues at Norway Post in 2001. Both Norway Post and the Norwegian Ministry of Transport and Communications had become dissatisfied with the results of a prior NAC-based method used to determine annual governmental payments to Norway Post to compensate for universal service costs.[282] The 'commercial approach' is equivalent to Frontier's PC method.[283]

The European Regulators Group for Postal Services has also surveyed methods for calculating the net cost of the universal service obligation as prescribed in the Postal Directive. In essence, the ERGP paper explains how NRAs can calculate the net cost of the universal service obligation using a 'reference scenario'. The ERGP report does not

**278** Ibid, p. 42.
**279** Ibid, pp. 49-50.
**280** Frontier Economics, *Recommendations on the form and manner that a net cost submission should be made by the universal service provider: a report prepared for Comreg* (May 2013), p. 1.
**281** Copenhagen Economics, *Manual For Calculating The Net Cost of the USO* (31 Oct 2011), p.5.
**282** Development of the commercial approach in Norway is described in K. Bergum, 'Calculating the Net Cost of the USO: a Practical Example from Norway' in M.A. Crew, P.R. Kleindorfer, and J.I. Campbell Jr., eds., *The Handbook of Worldwide Postal Reform* (2008). The Norwegian approach was first applied to another country in Copenhagen Economics, *What Is the Cost of Post Danmark's Universal Service Obligation?* (11 Mar 2008).
**283** Copenhagen Economics, *Manual For Calculating The Net Cost of the USO* (31 Oct 2011), p. 30, notes that the commercial approach is used in Norway and Denmark, citing studies in which Frontier Economics, *Study on the principles used to calculate the net costs of the postal USO* (2013), p. 51, reports that the PC method is used.

explicitly endorse one of the several calculation methods identified by Frontier and Copenhagen Economics in the above reports. In our view, however, ERPG's 'reference scenario' appears to be most similar to CE's commercial approach (to which ERPG refers by name) and Frontier's PC method. The ERGP observes:

> One of the main conclusions from the experience of Norway's USO cost calculation was also, that the 'Alternative Commercial Strategy' was most closely related to definition from the new EU Third Postal Directive (Directive 2008/6/EC3) and that this model represents a practical method for calculating the net cost of USO which governments may use to define compensation to a USP. *When studying this Alternative Commercial Strategy we can easily see the similarities with, what we in this report have referred to as, a reference scenario*.[284]

In summary, the consensus of several analyses over the last five years appears to be that the 'profitability cost approach' (PC) — also called the 'commercial approach' or 'alternative commercial strategy' approach — provides the basis for calculating the net cost of the universal service obligation in a manner that most closely corresponds to Annex I of the Postal Directive. This is not to suggest that estimates developed by other methods should be discounted as invalid, only that such estimates may not as fully reflect the concepts and objectives of the Postal Directive.

Plausible estimates of the net cost of universal service are relatively scare. In the last Main Developments report in 2010, Copenhagen Economics reported estimates from 10 Member States (BE, EL, HU, ES, IE, IT, MT, SI, IS, NO) and Switzerland.[285] The recent Frontier Study gives no cost estimates but reports that 13 Member States have calculated or are in the process of calculating the net cost of universal service: BE, BG, EE, ES, IE, IT, NL, SK, NO, X, Y (the identity of the last two Member States were confidential).[286] In both lists, the majority of cost estimates were prepared by USPs without independent verification and did not follow the PC methodology. The Frontier Study declares the PC method has been used to calculate the net cost of the universal service obligation in only 5 Member States: DK, SK, UK, NO, and X.[287] Of these studies, two (SK and X) were apparently prepared by USPs without external review. The Danish study was more independent — it was prepared by Copenhagen Economics for the Danish Chamber of Commerce — but was not verified by the

284 European Regulators Group for Postal Services, *Net Cost Calculation and Evaluation of a Reference Scenario*, ERGP (11) 17 Rev. 1 (Aug 2012), p. 16 (emphasis added, footnote omitted).

285 Copenhagen Economics, *Main Developments (2008–2010)* (2010), p 130.

286 Frontier Economics, *Study on the principles used to calculate the net costs of the postal USO* (2013), p. 28.

287 Two more studies were reported to be in progress in Netherlands and Finland, although the Dutch study may have been cancelled. The Dutch study was being prepared by the Dutch USP, PostNL, to support a request for compensation for the net cost of the universal service obligation. On 27 March 2013, PostNL withdrew its request for compensation in light of the government's support for a new postal reform law that will allow a reduction in the frequency of universal services from six to five days per week. *Wall Street Journal*, 'PostNL Halts Cost Compensation Request, Govt Looks to Adjust USO', 27 Mar 2013. http://online.wsj.com/article/BT-CO-20130327-707595.html [8 Jun 2013].

NRA.[288] The British study was prepared in 2008 by Frontier Economics. It analysed the cost of certain elements of the universal service obligation for the British NRA, Postcomm. Although the 2013 Frontier Study refers to this study as an example of the PC method, at the time Frontier characterised its calculation method as NAC.[289] The Norwegian calculation is prepared annually by the USP and reviewed by the ministry. It appears to be the only PC-based cost analysis that is actually used to determine compensation.

The present survey also requested information on the calculation of the net cost of the universal service obligation.[290] Five NRAs (BG, EE, ES, SK, NO) reported estimates of the net cost of the universal service obligation. Although specific cost estimates were not reported in the Frontier Study, the work in all four cases was described. In our survey, 6 additional Member States (BE, EE, EL, ES, IT, SE) and Switzerland report that the cost of the universal service obligation has been or is being studied. Five more Member States (CY, FR, HU, LU, NL) reported that cost studies are planned.

Table 2-25 summarises the available estimates for the net cost of the universal service obligation from these several sources. These estimates must be treated with caution since each reflects assumptions specific to the particular study and many depend upon methods of calculation which are not made clear.[291] Nonetheless, two broad generalisations appear appropriate. First, the estimated net cost of universal service in the industrialised western Member States appears to be on the order of 5 per cent or less while the cost in the eastern Member States is, at least in some cases, far more substantial (30 to 70 per cent). Second, there is some indication (e.g., EL, NO) that the net cost is increasing over time. In both cases, these trends are intuitively sensible given the low volume of mail in the eastern Member States and the declining volumes of mail in the west.

**288** Copenhagen Economics, *What Is the Cost of Post Danmark's Universal Service Obligation?* (2008), p. 6.

**289** Frontier Economics, *Net costs of elements of the universal service: a report prepared for Postcomm* (May 2008), p. 1.

**290** Questionnaire responses were submitted by about 1 May 2013, approximately 9 or 10 months after the information collected by the Frontier Study.

**291** Note, for example, in respect to the Bulgarian figure, the NRA notes 'In 2011 CRC approved the method for net cost calculation. The method currently is under construction'. The Slovakian NRA notes, 'These net costs has been calculated as preliminary net costs determined on the base of half year data 2012 and it is not final decision'.

Table 2-25 Estimates of the net cost of the USO

| | Year | Net cost % of US cost | USO cost method | Reviewed or approved by NRA | Source |
|---|---|---|---|---|---|
| BE | 2009 | 0 | DA | Yes | MD 2010 |
| BG | 2012 | 39.6 | NAC | ? | WIK Survey 2013 |
| DK | 2007 | 7 | NAC | Yes | DK Competition Authority |
| DK | 2008 | 1.5 | PC | No | CE study for Ch. of Commerce |
| EE | 2009 | 30 | DA | ? | WIK Survey 2013 |
| EL | 2008 | 1.3 | ? | Yes | MD 2010 |
| EL | 2009 | 5.2 | ? | Yes | MD 2010 |
| ES | 2009 | 12 | ? | Yes | MD 2010 |
| ES | 2012 | 17.2 | ? | Yes | WIK Survey 2013 |
| HU | 2009 | 3.8 | NAC | Yes | MD 2010 |
| IE | 2009 | 0 | ? | No | MD 2010 |
| MT | 2009 | 69 | ? | No | MD 2010 |
| SI | 2009 | 39 | ? | No | MD 2010 |
| SK | 2012 | 6.7 | PC | ? | WIK Survey 2013 |
| UK | 2008 | 5 | NAC | Yes | FE study for NRA |
| IS | 2009 | 10 | ? | Yes | MD 2010 |
| NO | 2006 | 2.3 | PC | Yes | WIK research |
| NO | 2009 | 4.3 | PC | Yes | MD 2010 |
| NO | 2012 | 9 | PC | Yes | WIK Survey 2013 |
| CH | 2007 | 7.8 | ? | ? | WIK research |
| CH | 2009 | 1.6 | PC | Yes | MD 2010 |

Source: Copenhagen Economics, 'What Is the Cost of Post Danmark's Universal Service Obligation?' (11 Mar 2008) and *Main Developments in the Postal Sector (2008–2010)* (2010); Frontier Economics, *Net costs of elements of the universal service:: a report prepared for Postcomm* (May 2008); WIK Survey

Note: Date for MD 2010 study assumed to be 2009 unless otherwise indicated.

## 2.5.8 Compensation of USP(s) for net costs of USO

Article 7 of the Postal Directive provides for compensation of universal service providers — logically only USPs designated under Article 4 of the Directive — in the following terms:

> 3. Where a Member State determines that the universal service obligations, as provided for in this Directive, entail a net cost, calculated taking into account Annex I, and represent an unfair financial burden on the universal service provider(s), it may introduce:
>
> (a) a mechanism to compensate the undertaking(s) concerned from public funds; or
>
> (b) a mechanism for the sharing of the net cost of the universal service obligations between providers of services and/or users.

> 4. Where the net cost is shared in accordance with paragraph 3(b), Member States may establish a compensation fund which may be funded by service providers and/or users' fees, and is administered for this purpose by a body independent of the beneficiary or beneficiaries

In essence, both compensation mechanisms amount to the use of public funds to compensate a USP for the portion of the net cost of the universal service obligation that are deemed to be ‘unfair’. In one case, the funds come from general tax revenues, and in the other case, from a ‘compensation fund’ funded by a special tax on postal service providers or their users.

The Frontier Study makes clear that there is no common approach to what may be deemed to constitute an ‘unfair’ burden on the UPS. The study observes:

> The assessment of whether a net cost of the USO is an unfair financial burden has been applied to:
>
> - a measure of the net cost of the USO adjusted for reasonable profits but before taking into account intangible benefits and adjustments for incentive for cost efficiency (e.g. Belgium);
> - a measure of the net cost of the USO netted off intangible benefits (e.g. Sweden, Norway, to mention a few).[292]

In the present survey, 6 Member States (CZ, EE, ES, IT, LT, NO) reported that they had deemed the burden of the universal service obligation to constitute an unfair burden on the USP.

The first method of compensating USPs mentioned in Article 7 is public funds for the general state budget. Four Member States (ES, IT, PL, NO) make use of this source of funding.

The other method of compensating USPs mentioned in Article 7 is a compensation fund funded by postal service providers and/or their users. Twenty-two Member States (AT, CY, CZ, DE, DK, EE, EL, ES, FR, HR, HU, IT, LU, LV, MT, PL, PT, RO, SI, SK, UK, IS, HR) have authorised the establishment of a compensation fund. However, only 4 Member States (CY, EE, IT, SK) have actually established a compensation fund. To date, compensation funds play only a minor role in supporting universal service.[293]

**292** Frontier Economics, *Study on the principles used to calculate the net costs of the postal USO* (2013), pp. 135-36.
**293** WIK Survey

### 2.5.9 Regulation of service quality

For domestic services, Member States may define quality of service standards, in particular as regards transit times, regularity and reliability of services (Article 16 Postal Directive). For intra-EU cross-border services, Member States must ensure compliance with standards contained in Annex II of the Postal Directive.

Table 2-26 shows for which postal services Member States have established routing time standards. Transit time standards are most commonly established for single piece services (letters and parcels). For bulk services (correspondence, advertisements as well as parcels), standards are defined in much fewer Member States. A possible justification for less control of routing time for bulk mail may be that these services are used by businesses who are less in need of legal protection. Another reason for less control of quality for bulk services may be that routing time standards reduce the commercial freedom of USP to diversify their bulk mail services (and regulators chose to grant USPs this flexibility).

Table 2-26 Routing time standards for postal services

| | | **No answer** |
|---|---|---|
| Single piece priority letters | AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK, IS, NO, CH, HR | LI |
| Bulk letters | AT, BE, CY, ES, HU, IT, LT, LU, LV, MT, RO, SK, IS, NO | CZ, DK, EE, LI |
| Advertisements posted in bulk quantities | AT, DK, HU, LU, MT, SK, NO | CZ, ES, IE, LI, HR |
| Newspapers, magazines, periodicals | BE, DE, FR, LU, MT, PT, SI, NO | CZ, EE, ES, LT, LI, HR |
| Single piece non-priority letters | BE, BG, DK, FI, FR, HU, LV, PL, PT, SK, UK, IS, NO, CH, HR | AT, CY, CZ, DE, ES, LU, MT, SI, LI |
| Single parcels | AT, BE, BG, DE, DK, ES, FR, HU, IT, LU, LV, MT, PL, PT, SI, SK, UK, NO, CH, HR | LI |
| Bulk parcels | AT, DE, DK, ES, HU, MT, SK | BG, CZ, LT, LI, HR |

Source: NRA questionnaire

Notes: USP answers in DE (bulk mail, bulk parcels), EE (single piece non-priority), IE (newspapers, magazines, periodicals), LT (bulk letters), PT (bulk advertisements), CH (bulk advertisements), IS (single and bulk parcels), HR (bulk mail)

Transit time targets for domestic single piece priority mail are very different across Member States. With the exception of Spain, where only a target D+3 delivery exists, all EU and EEA countries as well as Switzerland have defined D+1 targets.[294] The targets

**294** European Regulators Group for Postal Services, *Report on the Quality of Service and the End-user Satisfaction*, ERGP (12) 30 (30 Nov 2012), Gæði í póstþjónustu 2011. There is no transit time target in LI.

vary between 80 and 97 per cent.[295] While transit time targets have remained largely unchanged since 2010, overall transit time performance has improved during the last three years.[296] It is worth noting that in some Eastern European countries transit time performance varies strongly (up to 10 percentage points) from year to year, even in countries where high transit time targets have been implemented. This has been the case e.g. in Bulgaria, Latvia and Poland. On the contrary, in some more industrialised countries like Finland, Germany and Sweden, transit time performance is way above its respective target and generally varies in much smaller boundaries. In these countries, transit time performance seems to be largely independent of the level of D+1 targets. A possible explanation for this development might be that the quality of postal services in these countries is communicated quite transparently (e.g. on postal service providers' homepages, in their annual reports as well as in regulators' reports). The pressure resulting from this transparency incentivises operators to provide stable and high quality postal services.

Member States use very different modes of publication of transit time measurement results. The range of publication procedures varies between special quality reports by NRAs (in e.g. BE, FR, IE and IS), market studies or annual reports of NRAs (in e.g. ES and SE) as well as publications of the USP (in e.g. AT, CZ, cf. Case study 2-19).

According to our survey results, in 27 out of those 31 countries that have defined transit time targets for national mail, USPs measure transit time in accordance with CEN standard EN 13850.[297] The implementation of CEN standard EN 14508 is less common: 10 out of those 15 countries which have established transit time targets for non-priority single piece mail comply with EN 14508.[298] Targets are defined for a range of transit times between D+1 up to D+5, D+3 being the most commonly used criterion. Transit time performance measurement for domestic parcel post is compliant with the technical report TR 15472 in only 3 countries (BE, FR and SI).

**295** Cf. European Regulators Group for Postal Services, *Report on the Quality of Service and the End-user Satisfaction*, ERGP (12) 30 (30 Nov 2012).
**296** Cf. ibid.
**297** No answer from AT, BG, EE. LV and LI.
**298** Source: WIK survey. No answer from BG, LV and IS. The transit time measurement system applied by the USP in LT for non-priority single piece mail complies also with this standards although no target has been defined for the service.

Case study 2-19 Quality measurement in AT

Since Austrian new postal law came into force in 2010, both the Austrian postal regulator RTR and postal service providers are obliged to measure annual average transit time performance for letter post. In order to limit financial contributions from postal service providers for this purpose, RTR does not measure transit time performance itself but rather monitors quality measurement systems of universal postal service providers. Providers of universal services are obliged to measure transit time performance in compliance with EN 13850 and to publish the results annually. Currently, only Österreichische Post and GLS offer universal services. For the year 2011, RTR reported compliance of these providers' transit time performance with the standards set by postal law. However, RTR does not publish the results of the transit time measurement. This is done by Österreichische Post in its annual report.

Source: RTR (2013), Beschluss PRSON 35/11-25 vom 7 February 2013, Wien

In case USPs do not reach transit time targets as defined by national legal frameworks, most NRAs have the competence to take corrective measures in the case of letter post (in AT, BE, BG, CY, DK, EE, FI, FR, DE, EL, HU, IE, IT, LT, MT, NL, NO, PT, RO, SK, SI, UK and CH, HR); Only less than half of the NRAs have the competence to take corrective measures if transit time targets for parcels are not reached (AT, BG, DE, HU, IT, MT, NO, PT, SK, SI, UK and CH).[299]

Transit time targets for cross-border mail are defined by Postal Directive 97/67/EC and apply equally to all Member States, and all relations of Member States (i.e. mail sent from Portugal to Hungary). Transit time targets for cross-border letter mail are D+3 85 per cent and D+5 97 per cent. Measurement of transit time performance is undertaken by IPC who stated a D+3 performance of 93.1 per cent in 2012 across all 35 countries covered by the UNEX measurement system of IPC. The measurement of cross-border mail is compliant with CEN standard EN 13850.

## 2.6 Protection of users

### 2.6.1 User protection legislation and enforcement authority

Article 19 of the Second Postal Directive obliges Member States to ensure that 'transparent, simple and inexpensive' procedures for user protection in both single provider and multi-operator environments:

> Member States shall ensure that transparent, simple and inexpensive procedures are drawn up for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality

**299** Cf. European Regulators Group for Postal Services, *Report on the Quality of Service and the End-user Satisfaction*, ERGP (12) 30 (30 Nov 2012). No information on IS and LI.

standards (including procedures for determining where responsibility lies in cases where more than one operator is involved).

The Postal Directive extends user protection to users of all postal services, not only users of USPs.

Table 2-27 Regulation of user protection procedures (NRA)

| | Postal or consumer law | Enforcement by NRA or NCPA | Applies to non-USP(s) in US area | Applies to non-US services | USP issues annual rept | NRA issues annual rept |
|---|---|---|---|---|---|---|
| AT | Post law | NRA | Yes | Yes | No | No |
| BE | Post law | Both | Yes | Yes | No | No |
| BG | Both | Both | Yes | Yes | No | Yes |
| CY | Both | Both | Yes | Yes | No | Yes |
| CZ | Both | NRA | Yes | Yes | Yes | --- |
| DE | Post law | Other | Yes | Yes | No | Yes |
| DK | --- | Both | Yes | Yes | Yes | No |
| EE | Both | Both | Yes | Yes | Yes | --- |
| EL | Both | Both | Yes | Yes | Yes | No |
| ES | Both | NRA | Yes | Yes | --- | --- |
| FI | Both | NCPA | Yes | Yes | No | No |
| FR | Both | Both | Yes | Yes | Yes | Yes |
| HR | Post law | NRA | Yes | Yes | Yes | --- |
| HU | Both | Both | Yes | Yes | Yes | Yes |
| IE | Both | Both | Yes | Yes | --- | Yes |
| IT | Both | Both | Yes | Yes | Yes | --- |
| LT | Post law | NRA | Yes | Yes | Yes | --- |
| LU | Post law | NRA | Yes | Yes | Yes | No |
| LV | Post law | NRA | Yes | Yes | No | Yes |
| MT | Both | Both | Yes | Yes | Yes | No |
| NL | Post law | NRA | Yes | Yes | No | No |
| PL | Post law | NRA | NA | Yes | No | Yes |
| PT | Both | Both | Yes | Yes | Yes | --- |
| RO | Both | Both | Yes | Yes | Yes | Yes |
| SE | Both | Both | Yes | Yes | Yes | NA |
| SI | Both | NRA | Yes | Yes | Yes | Yes |
| SK | Both | NRA | Yes | Yes | Yes | Yes |
| UK | Post law | NRA | Yes | Yes | Yes | --- |
| IS | Both | Both | Yes | Yes | No | No |
| NO | Post law | NRA | No | No | No | Yes |
| CH | Post law | NRA | Yes | Yes | NA | NA |

Source: WIK Survey

The current status of user protection regulation in the Member States is summarised in Table 2-27. From this table, it appears that 16 Member States (BE, BG, CY, DE, DK, EE, EL, FR, HU, IE, IS, IT, MT, PT, RO, SE), representing about 57 per cent of the total EU/EEA postal market, authorise both the NRA and NCPA to enforce user protections in the postal sector. Another 13 Member States (AT, CZ, ES, HR, LT, LU, LV, NL, NO,

PL, SI, SK, UK) (41 per cent of EU/EEA letter post) as well as Switzerland rely solely on the NRA. Only Finland relies solely on the NCPA. All Member States have extended user protection to the services of non-USPs in and out of the universal service area.

The Postal Directive requires USPs to publish data on their handling of user complaints and, wherever appropriate, similar reports from other postal service providers. As shown in Table 2-27, in 17 Member States (CZ, DK, EE, EL, FR, HR, HU, IT, LT, LU, MT, PT, RO, SE, SI, SK, UK), the USP issues an annual report on user protection. In at least 11 Member States (AT, BE, BG, CY, DE, FI, LV, NL, PL, IS, NO), it appears that the USP does not do so. However, in 12 Member States (BG, CY, DE, FR, HU, IE, LV, PL, RO, SI, SK, NO) the NRA issues its own annual report on user complaints and subsequent appeals to the courts, if any.

### 2.6.2 Redress and remedies

Article 19 of the Postal Directive provides that Member States shall 'enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation'. Member States are obliged to ensure that users who do not get satisfaction from the USP can appeal to a 'competent national authority'.

Table 2-28 User protection: remedies and redress (NRA)

| | Complaint procedures approved by | Monetary compen-sation | CEN standards met | Multi-operator protection | Review of operator decisions | Authority reviewing operator | Authority can order remedies | Appeal from authority to court? |
|---|---|---|---|---|---|---|---|---|
| AT | No | No | No | No | Yes | NRA | None | --- |
| BE | No | No | No | No | Yes | Ombud | None | Yes |
| BG | Yes | Yes | No | No | Yes | NRA | None | Yes |
| CY | No | No | No | Yes | Yes | NRA | None | Yes |
| CZ | Yes | Yes | No | No | Yes | NRA | None | Yes |
| DE | Yes | No | No | No | Yes | NRA | R | No |
| DK | Yes | Yes | No | No | No | NRA | M+R | Yes |
| EE | Yes | Yes | No | Yes | Yes | NRA | None | Yes |
| EL | Yes | Yes | Yes | Yes | Yes | NRA | M+R | Yes |
| ES | Yes | Yes | No | No | Yes | NRA | None | Yes |
| FI | No | Yes | Yes | No | Yes | NCPA | --- | Yes |
| FR | Yes | Yes | No | No | Yes | NRA | None | Yes |
| HR | Yes | Yes | Yes | Yes | No | --- | --- | Yes |
| HU | Yes | Yes | Yes | No | Yes | NRA | M+R | Yes |
| IE | Yes | Yes | Yes | --- | Yes | --- | --- | No |
| IT | Yes | Yes | No | Yes | Yes | NRA | M | Yes |
| LT | Yes | Yes | Yes | Yes | Yes | NRA | M+R | Yes |
| LU | Yes | Yes | No | No | Yes | NRA | M+R | Yes |
| LV | Yes | Yes | No | No | Yes | NRA | None | Yes |
| MT | Yes | Yes | Yes | No | Yes | Other | --- | Yes |
| NL | No | No | No | NA | No | --- | --- | Yes |
| PL | Yes | Yes | No | Yes | Yes | --- | M+R | Yes |
| PT | No | Yes | No | No | Yes | Other | M+R | Yes |
| RO | Yes | Yes | No | Yes | Yes | NRA | None | Yes |
| SE | Yes | Yes | Yes | No | Yes | Ombud | --- | Yes |
| SI | Yes | Yes | Yes | No | Yes | NRA | M+R | Yes |
| SK | Yes | Yes | Yes | Yes | Yes | NRA | R | Yes |
| UK | No | No | No | No | Yes | Ombud | M+R | Yes |
| IS | Yes | Yes | No | No | Yes | NRA | --- | Yes |
| NO | Yes | Yes | Yes | No | No | --- | None | Yes |
| CH | No | No | No | Yes | Yes | Other | M+R | Yes |

Source: WIK Survey

As shown in Table 2-28, in 23 Member States (BG, CZ, DE, DK, EE, EL, ES, FR, HR, HU, IE, IT, LT, LU, LV, MT, PL, RO, SE, SI, SK, IS, NO), the NRA or NCPA must approve user protection procedures of the USP although this is not the case in 7 Member States (AT, BE, CY, FI, NL, PT, UK) and Switzerland. The Postal Directive requires that USPs provide a system of reimbursement and/or compensation where warranted. Most Member States have done so, but 6 Member States (AT, BE, CY, DE, NL, UK) and Switzerland, representing a third of the EU/EEA market, have not done so.

As required by the Postal Directive, almost all Member States have appointed a 'competent national authority' to review users' complaints that have not been satisfactory resolved by the USP. In most cases, this is the NRA. In 3 Member States (BE, SE, UK), it is the ombudsman or a similar consumer complaint body. In 2 Member States (MT, PT), the user has more than one option for appeal. In virtually all Member States, the user can take a further appeal from the competent national authority to the courts if he or she is not satisfied. In addition, the European Committee for Standardisation (CEN) has also approved a standard, EN 14012, for handling postal sector complaints and providing redress. Eleven Member States (EL, FI, HR, HU, IE, LT, MT, SE, SI, SK, NO) comply with this standard.

These sector-specific user protection procedures may be supplanted, however, by recent EU legislation on alternative and online dispute resolution.[300] Alternative dispute resolution entities are non-judicial entities — such as a conciliator, mediator, arbitrator, ombudsman, or complaints board — who proposes or imposes a solution or brings the parties together to help them find a solution. Some of these entities operate fully online and are called online dispute resolution entities. The EU measures are intended to encourage consumers to seek solutions to the problems they encounter when buying products and services in the Single Market. In particular, it is hoped that efficient alternative dispute resolution procedures will boost online purchases because more online and cross-border trade in the EU will give consumers more options and open new markets for businesses. Member States are obliged to implement these alternative dispute resolution procedures by mid-2015.

**300** Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L165, 18 Jun 2013, p. 63; Regulation (EU) No 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L165, 18 Jun 2013, p. 1.

Table 2-29 User complaints, 2010 - 2012

| | Complso USP, 2010 | Compls reviewed by NRA, 2010 | NRA agreed with complaint (%), 2010 | Compls to USP, 2011 | Compls reviewed by NRA, 2011 | NRA agreed with complaint (%), 2011 | Compls to USP, 2012 | Complts reviewed by NRA, 2012 | NRA agreed with complaint (%), 2012 |
|---|---|---|---|---|---|---|---|---|---|
| AT | --- | 0 | --- | --- | 64 | --- | --- | 59 | --- |
| BE | --- | 9654 | 43 | --- | 11991 | 49 | --- | --- | --- |
| BG | 5269 | 26 | 19 | 2459 | 96 | 44 | --- | --- | --- |
| CY | 30 | 3 | 0 | 30 | 2 | 0 | 30 | 2 | 0 |
| CZ | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| DE | --- | --- | --- | --- | --- | --- | --- | 400 | --- |
| DK | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| EE | --- | 14 | 20 | --- | 16 | 20 | --- | 25 | 20 |
| EL | 9591 | 99 | 40 | 8389 | 76 | 40 | --- | --- | --- |
| ES | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| FI | --- | --- | --- | --- | --- | --- | --- | 305 | --- |
| FR | 1359202 | --- | --- | 1396958 | 75 | 100 | 1303733 | 53 | 50 |
| HR | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| HU | 11921 | 43 | 65 | 25954 | 73 | 63 | --- | 98 | 75 |
| IE | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| IT | 65777 | 0 | --- | 86242 | 0 | --- | 23821 | 450 | --- |
| LT | 3871 | 31 | 12.9 | 5216 | 47 | 8 | 3303 | 24 | 7.7 |
| LU | 900 | 0 | 0 | 1386 | 0 | 0 | --- | 1 | 0 |
| LV | 15 | 0 | --- | 16 | 0 | --- | 24 | 0 | --- |
| MT | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| NL | --- | 78 | 11 | 278000 | 98 | 12 | 146000 | --- | --- |
| PL | 231048 | --- | --- | 221981 | --- | --- | --- | --- | --- |
| PT | 71983 | 12736 | --- | 79418 | 10791 | --- | 91097 | 8565 | --- |
| RO | 6.031 | --- | --- | 4.540 | --- | --- | --- | --- | --- |
| SE | 90 | --- | --- | 150 | --- | --- | 110 | --- | --- |
| SI | 16 | 16 | 12.5 | 20 | 20 | --- | 19 | 19 | --- |
| SK | 57627 | 36 | 64 | 70814 | 25 | 40 | --- | 37 | 54 |
| UK | 1195553 | 303 | 40.59 | 1230398 | 428 | 41.35 | 1428242 | --- | --- |
| IS | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| NO | --- | 80 | --- | --- | 80 | --- | --- | 80 | --- |
| CH | 4000 | --- | --- | --- | --- | --- | --- | --- | --- |

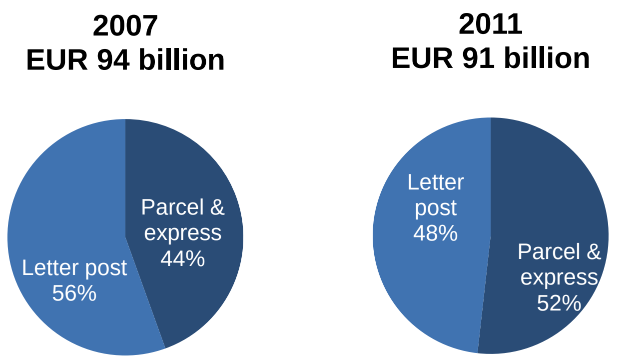
Source: WIK Survey

Recent complaint data is set out in Table 2-29. From these statistics it appears that overall the user complaint procedures are well used with a meaningful right to review.

# 3 Market and Economic Developments

## 3.1 Sector overview

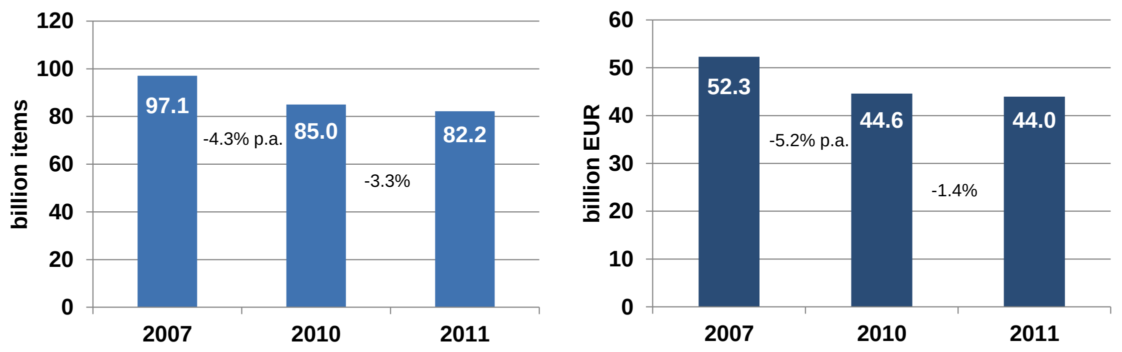
Figure 3-1 The European postal sector 2011




Source: Based on WIK survey and WIK-Consult / ITA Consulting (2009), Evolution of the European Postal Market since 1997 and A.T. Kearney (2012).

Between 2007 and 2011 the size of the European postal sector has reduced from EUR 94 billion to 91 billion accounting for 0.72 percent of EU-28 GDP. While revenues in the parcel & express sector have grown, demand for letter post services has declined. For this reason the structure of the European postal sector has changed: now parcel & express revenues account for more than half of total sector revenues.

Figure 3-2 Development of the European letter post sector in terms of volume and revenue (domestic and cross-border inbound letter post)

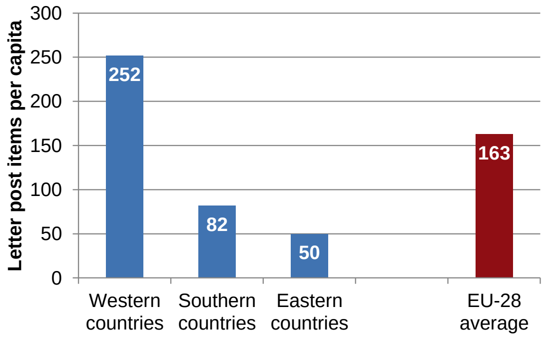



Source: Based on WIK survey and WIK-Consult / ITA Consulting (2009), Evolution of the European Postal Market since 1997.

Note: Croatia is excluded to ensure comparability (no 2007 figures for Croatia)

In 2011 the EU letter post sector accounts for in total EUR 44 billion or 0.34 percent of the GDP. Between 2007 and 2011 the European letter post sector has declined in terms of revenues and volume (Figure 3-2). Between 2007 (pre-crisis level) and 2010 volume declined in average 4.3 percent per year and revenue 5.2 percent per year. Between 2010 and 2011 the decline has slowed down to 3.3 percent in volume and 1.4 percent in revenue. It appears that, overall, tariffs has slightly gone down between 2007 and 2010 while between 2010 and 2011 postal operators has increased prices to compensate for volume decline. It is highly probable that the volume decline continues in 2012 while the revenue development is uncertain.

Figure 3-3 Letter post items per capita by country group (2011)

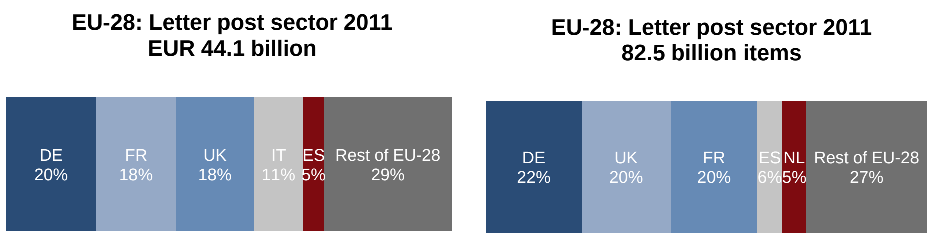



Source: WIK estimation

Note: Western countries: AT, BE, DE, DK, FR, FI, IE, LU, NL, SE, UK, IS, LI, NO, CH
Southern countries: CY, EL, ES, IT, MT, PT
Eastern countries: BG, CZ, EE, HR, HU, LT, LV, PL, RO, SI, SK

The Western countries have still the highest letter post volume per capita with 252 items in 2011. The Southern and the Eastern countries achieved values substantially below 100 items: 82 the Southern countries and only 50 the Eastern countries. In the European Union (EU-28) the average is 163 items per capita (see Figure 3-3).

Figure 3-4 EU-28: Letter post sector by country

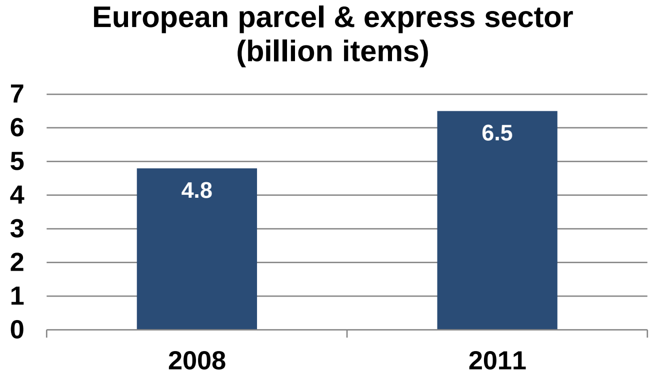



Source: WIK survey and WIK research

The largest letter post markets in terms of absolute revenue and volume are Germany, the UK and France followed by Italy and Spain in terms of revenue shares respectively Spain and the Netherlands in terms of volume shares. See Figure 3-4.

The key players in the letter post sector are still the universal service providers. In most countries they have market shares well above 95 percent in terms of volume and revenues. In some domestic letter post markets delivery competition with market shares above 5 percent exists, notably in Bulgaria, Croatia, Germany, Italy, the Netherlands, Poland, Spain and Sweden.

Figure 3-5 EU-28: Parcel & express sector (in volume)




Source: 2008: A.T. Kearney estimation; 2011: WIK estimation.

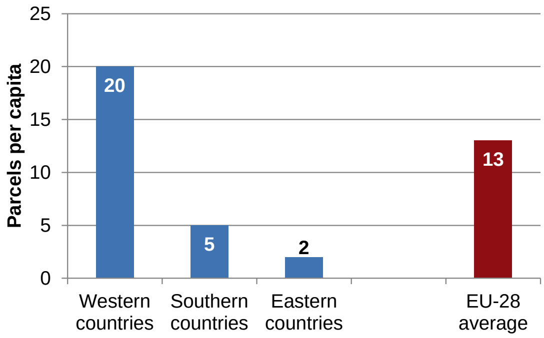
In contrast to the letter post sector the European parcel & express sector is dynamically growing. Parcel volume increased to 6.5 billion items in 2011.

Figure 3-6 EU-28: Parcel & express sector by country




Source: WIK estimation.

Figure 3-7 Parcels per capita by country group (2011)




Source: WIK estimation

Parcel volume per capita is highest in the Western countries with 20 parcels. This is less surprising because distance selling (and thus e-commerce) is well established in these countries. The Southern and the Eastern countries achieved only five respectively two parcels per capita. In the European Union (EU-28) the average is 13 parcels per capita (see Figure 3-7).

From a geographical perspective, A.T. Kearney estimates that domestic express & parcel services account for roughly 70 percent of total revenues respectively 90 percent of total volume.[301] For 2010 A.T. Kearney estimated that 10 percent of cross-border and 43 percent of domestic volume accounts for B2C shipments.[302]

**301** A.T. Kearney (2012), Europe's CEP Market: Growth on New Terms, http://www.atkearney.com/de/transportation/ideas-insights/article/-/asset_publisher/LCcgOeS4t85g/content/europe-s-cep-market-growth-on-new-terms/10192

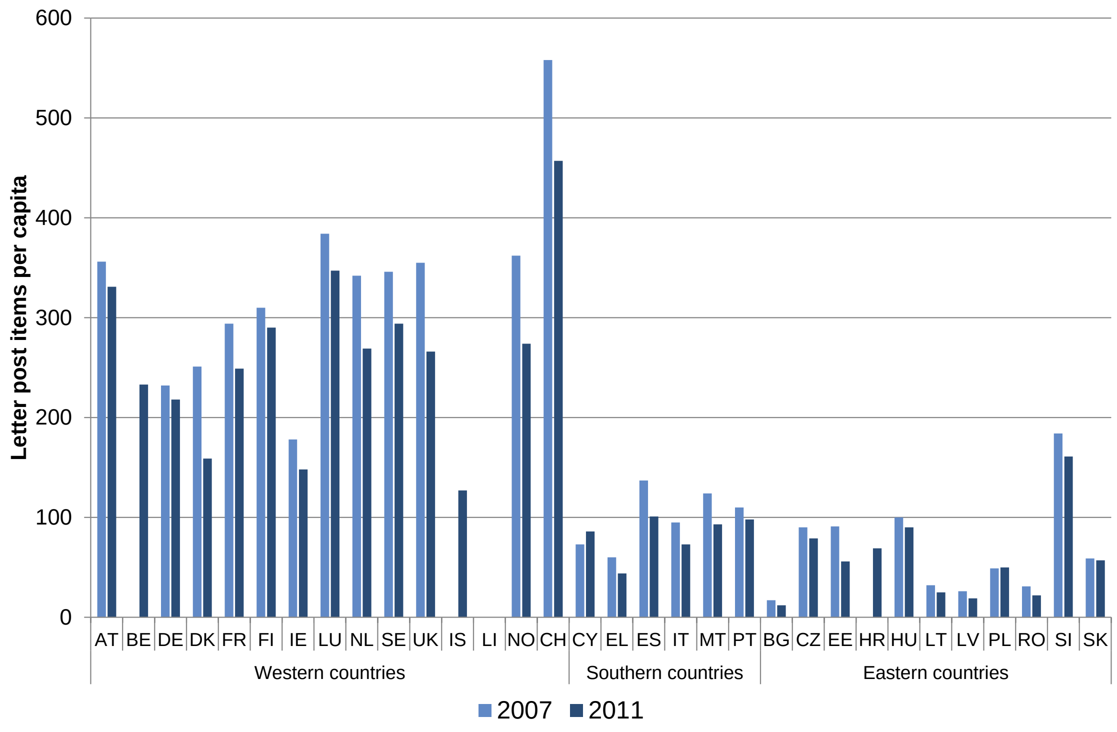
**302** A.T. Kearney (2011), Press release 30 November 2011, http://www.atkearney.de/content/veroeffentlichungen/pressemitteilungen_detail.php/id/51529/practice/transportation

## 3.2 Letter post markets

### 3.2.1 Demand for letter post services

#### 3.2.1.1 Developments in demand for letter post services

Figure 3-8 Domestic letter post items per capita (2007 and 2011)




Source: WIK survey and WIK research

Note: 2007 data missing for BE, HR, IS and LI; 2007 and 2011 figures of CH not comparable due to change in measurement method (see PostReg, Tätigkeitsbericht 2010, p. 26).

Two major developments challenged the letter post markets in the past five years: economic decline and changing communication habits between businesses, between consumers and between businesses and consumers. The combined effect results in substantial decline in demand for letter post services in Europe that is reflected in visible losses in per capita items per country (see Figure 3-8).

Table 3-1 Letter post volume (domestic and cross-border inbound) per country group (2011)

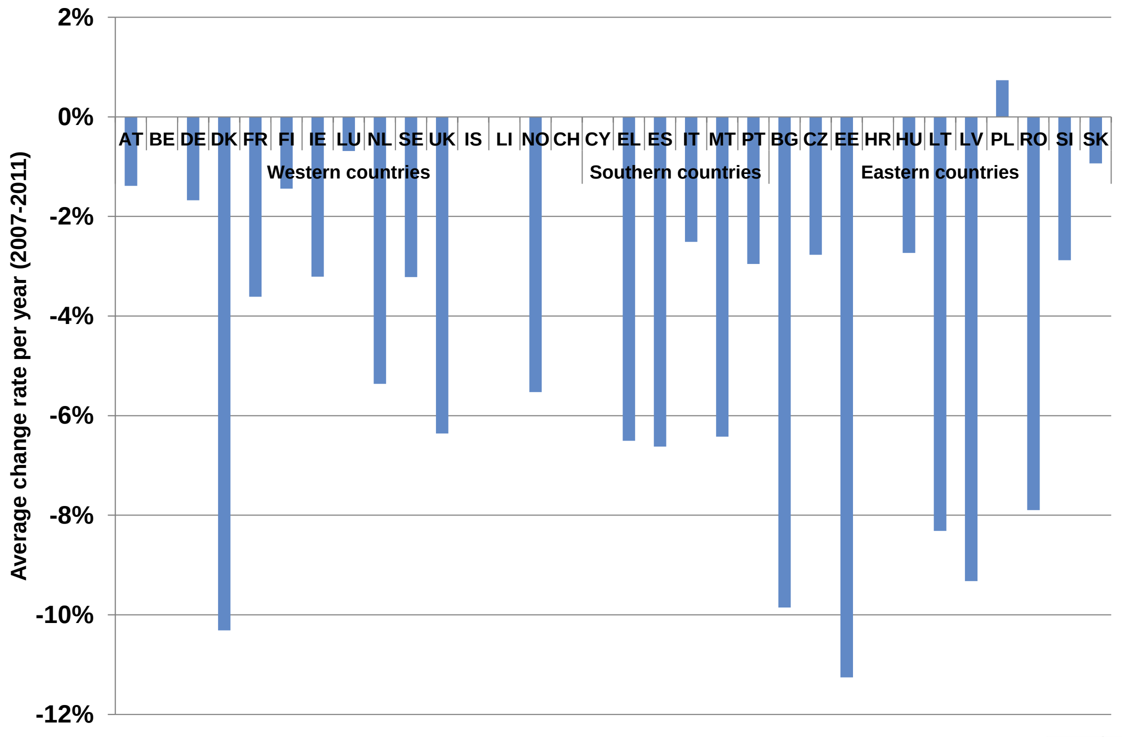
| | Population distribution (2011) | Distribution of letter post volume (2011) | Letter post items per capita (2011) | Average change rate per year (2007-2011) |
|---|---|---|---|---|
| **Western countries** | 55% | 82% | 252 | -3.9% |
| **Southern countries** | 25% | 12% | 82 | -6.0% |
| **Eastern countries** | 21% | 6% | 50 | -2.4% |
| **Total (32 countries)** | **520m** | **87.5bn** | **168** | **-4.0%** |
| **EU-28** | **507m** | **82.5bn** | **163** | **-4.1%** |

Source: WIK survey and WIK research

Note: Western countries: AT, BE, DE, DK, FR, FI, IE, LU, NL, SE, UK, IS, LI, NO, CH
Southern countries: CY, EL, ES, IT, MT, PT
Eastern countries: BG, CZ, EE, HU, LT, LV, PL, RO, SI, SK, HR
Average change rate per year: IS, LI and HR excluded (no 2007 data)

However, some countries are more affected than others which becomes visible when looking at average change rates per year per country group (see Table 3-1). More than 80 percent of letter post volume is delivered in the Western countries that reach around 250 items per capita (weighted average). The Southern countries deliver 12 percent and reach only 82 items per capita, substantially less than in 2007 (>100 items). These countries were mostly affected by the economic recession and the debt crisis which is reflected in an average change rate of minus 6 percent in letter post volume between 2007 and 2011. Letter post volume in the Eastern countries is still low with 50 items per capita accounting for 6 percent of total European letter post. Compared to the Southern or Western countries they lost less volume, in average minus 2.4 percent. Overall, in the European Union letter post volume declined in average by minus 4.1 percent between 2007 and 2011.

Figure 3-9 Average change rate per year for domestic and cross-border inbound letter post volume



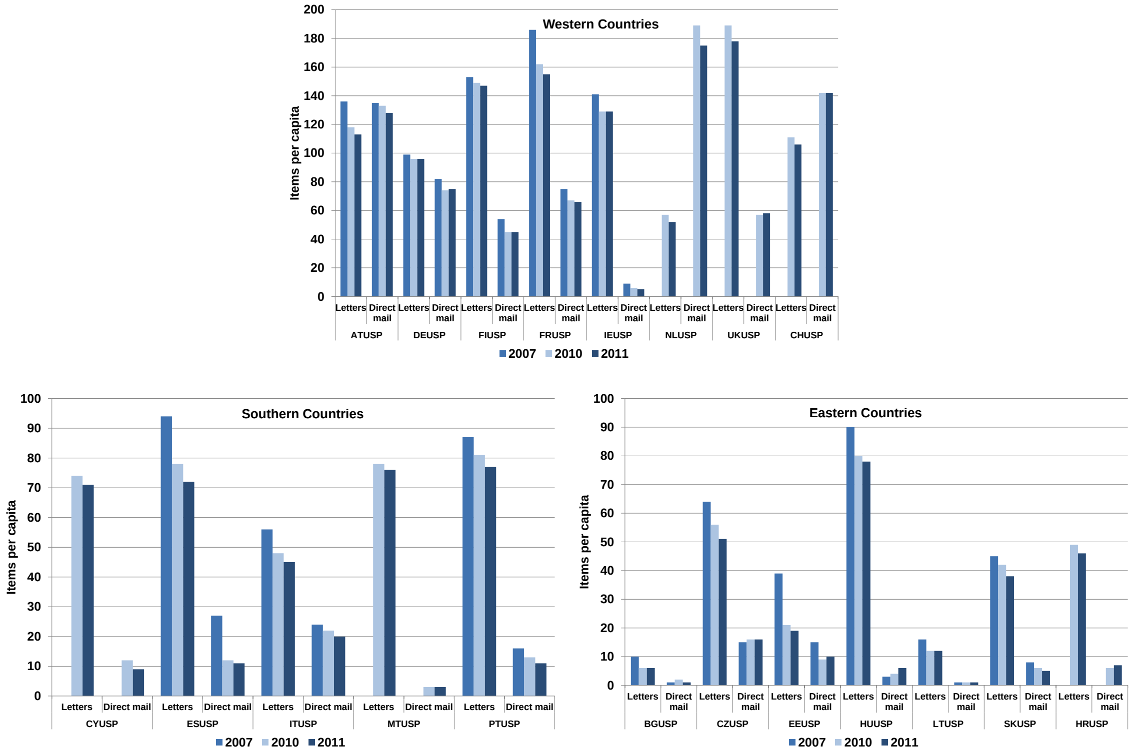

Source: WIK survey and WIK research

Note: BE (2007, confidential), CY, HR, IS and LI; 2007 and 2011 figures of CH not comparable due to change in measurement method (see PostReg, Tätigkeitsbericht 2010, p. 26).

However, decline in letter post even differs among the countries within the country groups (see Figure 3-9):

- Compared to the average decline per year of 3.9 percent in the Western countries (see Table 3-1) particularly Denmark, the Netherlands, Norway and UK face average change rates below minus 4 percent.
- All Southern countries except for Portugal have average change rates of around minus 6 percent per year.
- In the Eastern countries, particularly the Baltic countries, Romania and Bulgaria suffer under substantial decline in letter post volume with rates of less than minus 8 percent per year.

Figure 3-10 Developments in letters and direct mail (USP data)




Source: WIK survey and WIK research

Note: NLUSP (PostNL): Direct mail includes periodicals and magazines

Generally, letters and direct mail have developed differently since 2007 (see Figure 3-10):

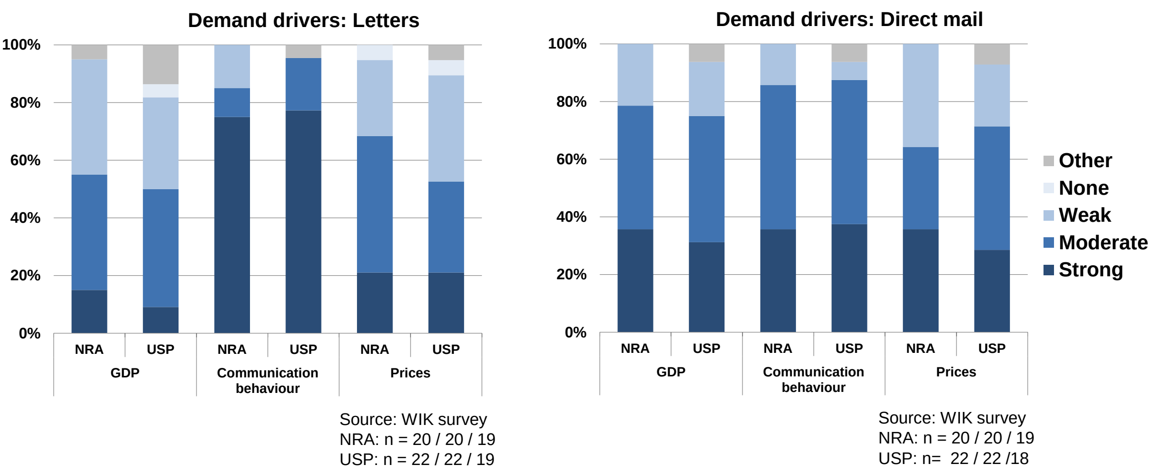
- Letters (delivered by USPs) declined continuously over time in each country group
- Direct mail declined substantially between 2007 and 2010 due to economic recession 2008/09 (due to cut marketing expenses) in most countries
- Direct mail volumes stabilized 2010/2011 in Western and Eastern countries
- In the Southern countries direct mail still continued falling which reflects the lasting economic recession in these markets.

Additionally, volume data indicates that there is still a substantial difference in the use of addressed advertising between the country groups. In Southern and Eastern countries companies made less use of (addressed) direct mail with per capita items between 10 and 20 in the Southern and below 10 in the Eastern countries.

Basically, low address quality may limit the role of addressed direct mail in Eastern and Southern countries.[303] In these countries the USPs are often very active in the distribution of unaddressed advertising. Among the Western countries Ireland has very low direct mail volume due to the still missing postal code system combined with a substantial share of ambiguous addresses.[304]

### 3.2.1.2 Key drivers for demand

Figure 3-11 Role of demand drivers




Source: WIK survey

The key drivers for letter post demand are the economic development, changes in the communication behaviour and, finally, pricing of postal services. This last factor is the only one that is under control of postal companies and we analyse this aspect in more detail in section 3.2.3. Furthermore, in the view of the survey respondents the drivers affect the major letter post segments (letters and direct mail) differently: while the changing communication behaviour is the major driver for letter demand, direct mail demand is affected by each driver similarly.

The use of electronic channels depend on a bundle of factors that differ among countries. The digital infrastructure (notably broadband access) plays a fundamental role. But even if the infrastructure is existing, there are still substantial differences in the use of digital media.

**303** Interview FEDMA.
**304** FEDMA notes that about 40 percent of Irish addresses are ambiguous (interview FEDMA). The situation will improve if a postal code system is launched as foreseen by the Irish government.

## Case study 3-1 Research on mail substitution

Economic activity has been the dominant driver of mail demand in the past. With increasing use of new means of communication, this relation has weakened – in some countries more than in others, depending on the pace of adaption of new technologies and user habits. Recent research shows that economic activity still is an important driver of mail demand. Meschi et al. (2011) showed the impact of income on total mail demand for a sample of thirteen European countries but state that the significance of this economic indicator has declined due to substitution by electronic communication.**305** They also point at the two-faced nature of economic activity with respect to mail volume: although it leads to mail volume growth, increasing income also leads to increasing broadband penetration rates which could inversely affect mail volumes, and in fact does, according to the authors, but differently in each country. The effect of broadband penetration on mail volume seems to depend on other factors then mere penetration rates or other measurable variables. Some studies have found evidence that security concerns, user friendliness of the electronic solution, or communication habits play an important role in a countries' substitution pattern.

For example, observations in Elkelä (2011) on communication channels for sending bills in sixteen European countries are described. The research is based on a survey by Finnish USP Itella, asking companies and consumers for their preferences when sending and receiving invoices. Non-surprisingly, the use of electronic bills was wide-spread in the Nordic countries while Middle and Eastern European countries have backlog in this respect.**306** These differences, Elkelä found, can only be partially explained by different internet infrastructure in these countries. In the survey, consumers from Germany, United Kingdom and some Eastern European countries expressed strong current preferences for paper bills and estimated this preference to hold for the next two to three years after the survey. However, even in these countries (with the exception of Germany), the use of electronic bills has increased compared to earlier surveys by Itella.

Another Finnish study supports this thesis. Nikali (2011) points at the importance of three factors as pre-requisites for e-substitution: the substitute must be easy to use, reliable and data must be secure.**307** He also shows that the pace of substitution differs per mail segment. While in C2C communication (social mail), substitution takes place very quickly and has already been realised to a large extent, substitution in B2C segments is low due to a slower acceptance of electronic communication at the consumers side.

While substitution modifies the relevance of economic activity as a driver of mail, this is also true for another demand driver which has been classically used for explaining mail volume development: the price of mail services. Nikali (2011) analyses the correlation between price elasticity of demand and substitution. He comes to the conclusion that in case of low substitution (whether due to lack of substitutes or unwillingness of consumers to switch is irrelevant) price is an important selection criterion and price elasticity is high. According to Nikali, this applies to B2C communication. In mail segments with rather high substitution, like C2C, demand is rather inelastic because it depends on other factors than price.

---

**305** See Meschi, Meloria; Cherry, Matthew; Pace, Carla and Milena Petrove (2011): Understanding the impact of e-substitution on letter mail volumes: a multi-country panel study, in: Crew, Michael and Kleindorfer, Paul (eds.), Reinventing the Postal Sector in an Electronic Age, Advances in Regulatory Economics, Cheltenham: Edward Elgar, p. 47-60.

**306** See Elkelä (2011), Invoicing in 16 European countries, in: Crew, Michael and Kleindorfer, Paul (eds.), Reinventing the Postal Sector in an Electronic Age, Advances in Regulatory Economics, Cheltenham: Edward Elgar, p. 20-35.

**307** See Nikali, Heikki (2011), Does the level of price elasticity change with the progression of substitution?, in: Crew, Michael and Kleindorfer, Paul (eds.), Reinventing the Postal Sector in an Electronic Age, Advances in Regulatory Economics, Cheltenham: Edward Elgar, p. 36-46.

Some countries are quite advanced in the implementation of their digital agendas, notably Denmark that faces substantial losses in letter post volume since years (see Case study 3-2). The Danish development illustrates the potential future developments in other European countries: to this respect Denmark is a trend-setter.

Case study 3-2 E-government services drive substitution: The example of Denmark

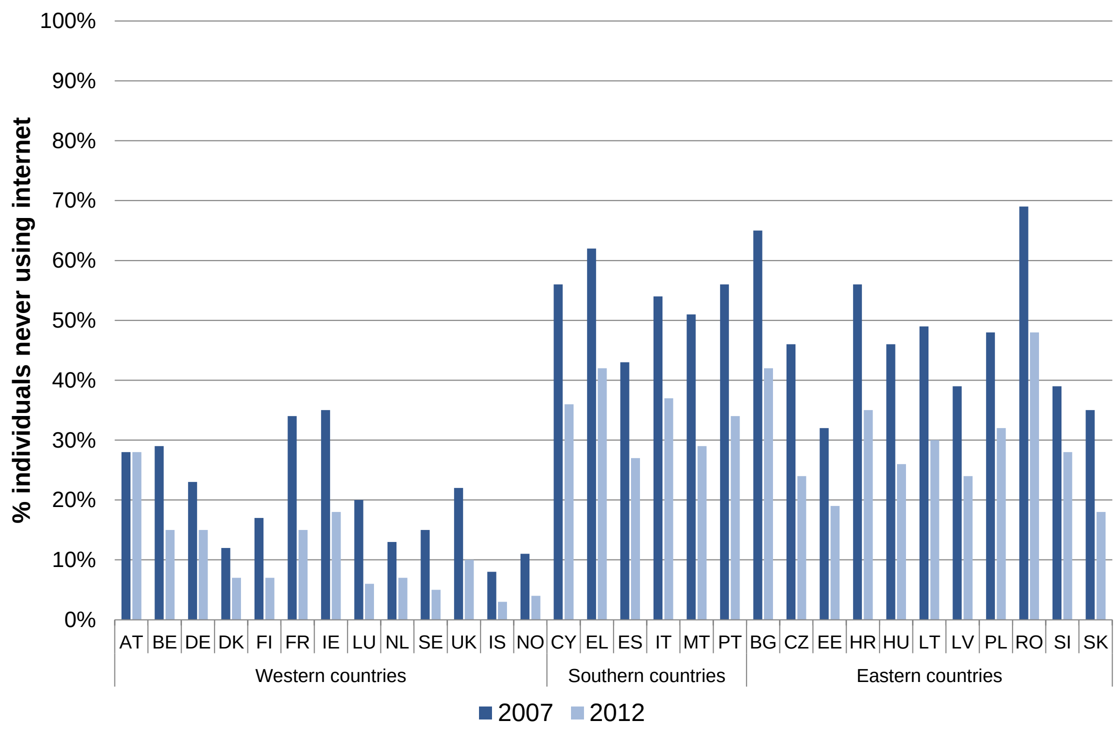
The Danish electronic communication system e-boks has started its service in 2001 and grown rapidly. Today, the electronic mail box solution is used by 3.8 million receivers (~70% of the Danish population), and 20,000 senders. e-boks is therefore the most successful system for secure electronic communication in Europe. It is owned in equal shares by Post Danmark and Nets A/S, a Danish service provider of payment systems.

e-boks offers public institutions and companies a way to communicate electronically with customers and citizens via a secure platform. All Danish municipalities and regional authorities send mail via e-boks, as well as a large number of insurances, banks, energy, water, and telecommunication companies. e-boks allows only for transaction mail, sending advertisement is not allowed. Received documents can be archived in e-boks, and its free of charge for receivers. Users can also respond to messages. In 2012, 205 million letters have been sent via e-boks. In the same year, Post Danmark delivered 685 million letters. Yet this success story was no overnight development: it took five years (until 2006) to reach one million users. Since 2006, the distribution of e-boks among the broad public has accelerated and user numbers have tripled. e-boks in now also available as a mobile app for smartphones. This developments is also reflected in the volume figures of Post Danmark: Between 2009 and 2012 Post Danmark lost around one third of its volume (excluding periodicals).

Three main factors contributed to e-boks rise: First, e-boks has been strongly pushed by the Danish government. The Danish e-government strategy even foresees that each citizen must have a digital mail box as of 2014 and it will be mandatory for citizens to use digital solutions in all their written communications with the public authorities by 2015.[308] Second, e-boks users still have the choice between physical and electronic delivery and even may change their choice any time. Third, access is very easy: unlike other electronic mail systems in other European countries, e-boks can be accessed via online banking which is commonly used by a large number of citizens and companies in Denmark. Alternatively, users can access e-boks via a digital signature.

**308** See eGovernment Factsheets (http://epractice.eu), eGovernment in Denmark, January 2012, p.12.

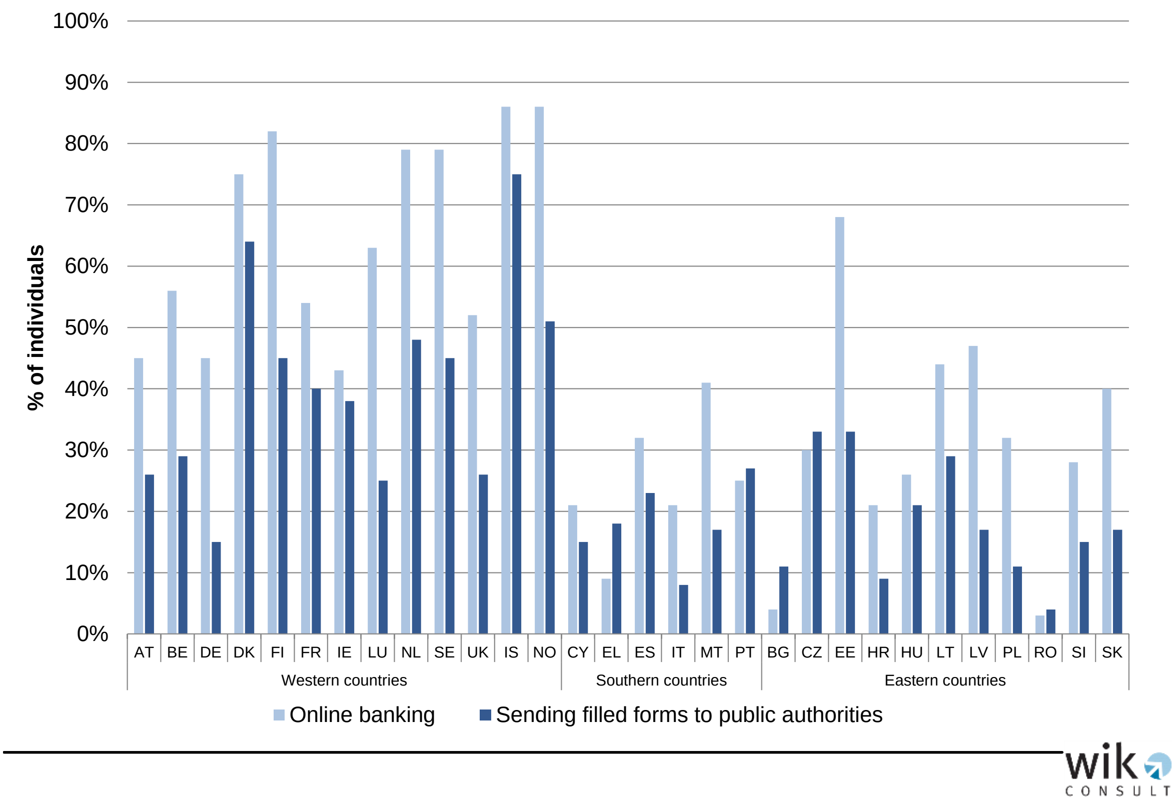
Figure 3-12 Digital inclusion: % individuals never using internet (2007 and 2012)




Source: Eurostat, BfS (CH)

However, the digital inclusion in the Western countries is substantially more advanced than in the Eastern and Southern countries (see Figure 3-12). The share of consumers never using the internet is particularly low in the Nordic countries (incl. Denmark), Luxembourg and the Netherlands in the Western countries. In the group of the Eastern countries Estonia and Slovakia have the lowest shares of consumers never using the internet.

Figure 3-13 Usage of mail relevant internet applications




Source: Eurostat

The situation becomes even clearer when looking at ICT indicators related to the usage of letter services: online banking and sending filled forms to public authorities (see Figure 3-13). Online banking, a more complex digital application, is best accepted, again, in the Nordic countries and the Netherlands with user rates of more than 70 percent of consumers. The leader in the Eastern countries is Estonia with nearly 70 percent. In the case of electronic transmission of forms Denmark and Iceland lead the group of the Western countries: more than 60 percent of consumers send filled forms electronically to the public authorities. The share is particularly low in Germany with less than 15 percent because German people are highly reluctant to use e-mail for official documents (see Case study 3-3). In the Southern and the Eastern countries the shares vary between less than 10 and some 30 percent of individuals communicating electronically with their public authorities. Estonia and the Czech Republic lead the group of the Eastern while Portugal and Spain have shares above 20 percent among the Southern countries.

Case study 3-3 Concerns with De-Mail in Germany

De-Mail is a solution for secure electronic communication between clearly identified users in Germany. The service can be offered by any (private or public) provider whose technical capacity and measures to ensure security and confidentiality of communication are approved by the German institute for security in information technology (a public institution). Up to date, there are three providers of De-Mail of whom two are telecom companies, one is a software service provider. Some other companies have announced to offer the service soon. All providers of De-Mail are obliged to offer their service within the framework of the De-Mail law that imposes duties on the providers and defines a minimum range of services that have to be offered (user identification, mail box service and archiving of documents).

The reactions following the draft legislation on De-Mail in 2010 were fierce and unprecedented, given that the German government was trying to implement an electronic communication system that already existed similarly in other European countries. The proposal was criticized by many stakeholder groups, there are three main concerns.

First, security problems were the biggest issue and have been discussed widely in the press. De-Mail does not prescribe end-to-end encoding technology, causing the need to decode and re-encode in a logical second a De-Mail message when the message is transmitted from one provider of De-Mail to another. The lack of end-to-end encoding of De-Mail caused a lot of confusion among potential users. De-Mail providers themselves can see no security problems here.[309]

Second, some confusion about the labelling of De-Mail addresses arose upon Deutsche Post's introduction of a similar electronic mailbox service ('E-Postbrief') whose addresses do not end on 'de-mail.de'. Deutsche Post successfully intervened against a proposed obligation to label De-Mail addresses with the suffix 'de-mail'. Contrarily to earlier announcements to become a registered provider of De-Mail services, Deutsche Post has not realised this. Therefore, there are now two concurring services in Germany whose users cannot exchange messages.

Third, practical issues of customer friendliness and usability have been criticised. With De-Mail, it is not possible for users to switch between physical or electronic reception of document. Users are therefore obliged to receive electronically from all senders that choose this channel (and information on which senders use De-Mail is not transparent). Furthermore, many users complain about cumbersome processes of opening a De-Mail-account.[310]

Generally, the consumers' habits and preferences play a central role in the pace of substitution even in the Nordic countries (see Case study 3-4 for Sweden). In many countries the substitution process appears to be more driven by changing consumers' habits particularly due to the generation of 'digital natives' that grow older and therefore becomes more and more important. Companies usually follow changing needs and preferences of their customers. Consequently, with changing generations the use of physical mail will necessarily decline in each country (if the digital infrastructure allows this development).

**309** See e.g. Deutsche Telekom (2012), Press release from 6 March 2012, Bundesamt für Sicherheit in der Informationstechnologie: Telekom ist startklar für De-Mail.
**310** See Stiftung Warentest (2012), De-Mail und E-Postbrief: Dienste im Vergleich, 29.11.2012.

**Case study 3-4 Satisfaction with electronic and physical communication in Sweden**

Attitudes towards using electronic communication instead of paper mail change only very slowly, and depends heavily on the content. In Sweden, where Sweden Post's electronic mail box system 'ePostboxen' is quite widely spread, the paper bill enjoys high popularity: in 2012, still 77% of receivers think it is important to receive invoices as paper in their letter box (2006: 90%).[311] Yet paper is not the channel of choice for all contents: only 39% of receivers want to get their account statement via paper letter, and 58% would prefer this channel for their annual financial statement from their bank – all others prefer some kind of electronic reception.[312] An explanation for this difference might be that it is quite typical for human nature to like what we use often: Internet banking has an even longer history in Sweden than the ePostboxen and is commonly used. These customer preferences show that even in a country with high broadband penetration rates and a successful system for electronic messages, communication habits do not change rapidly.

In sum, the indicators show that particularly the Nordic countries (lead by Denmark), the Netherlands and the Baltic countries (particularly Estonia) are mostly challenged by e-substitution, today. The Danish example also highlights that if the government forms the 'wave-breaker' for digital communication the e-substitution process accelerates. As soon as the critical mass of consumers is used to communicate electronically for official purposes more traditional companies also jump on the bandwagon. In contrast, it is less likely that single companies (even large ones) take over the role of a 'wave-breaker' to 're-educate' people.

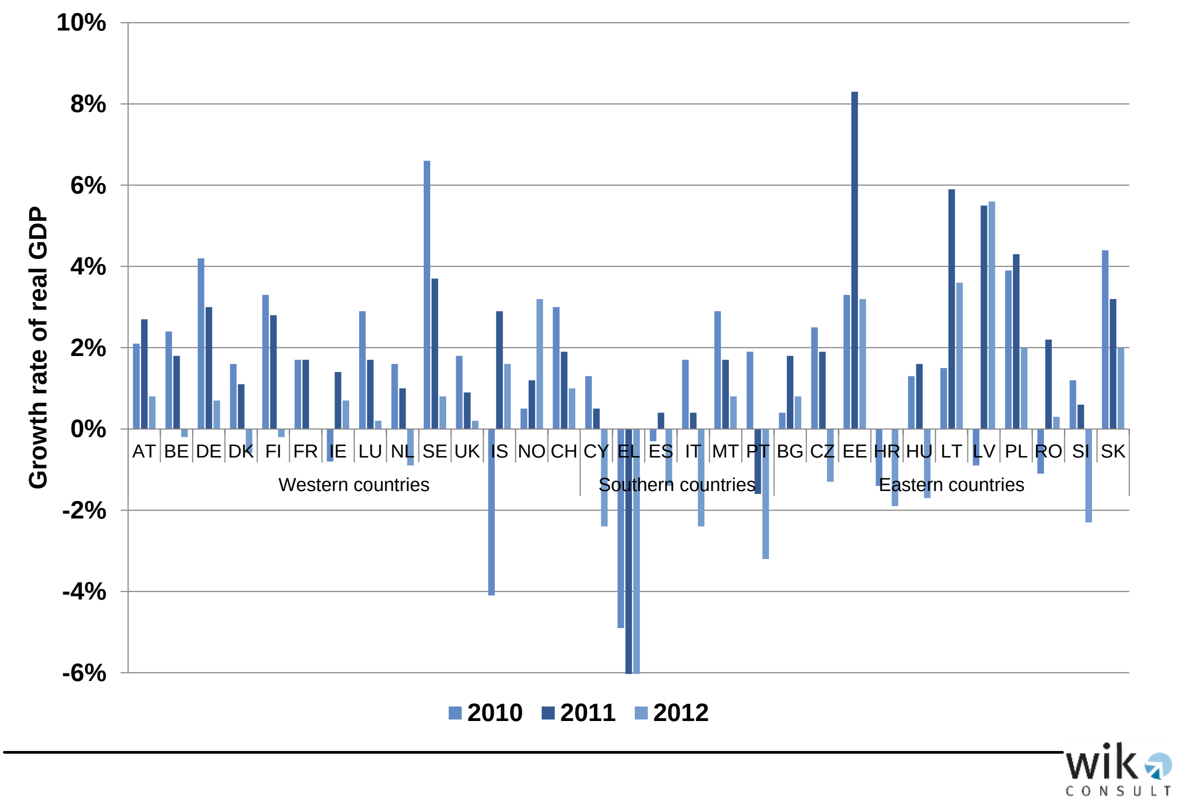
*Direct mail*

Survey respondents highlight that the demand for direct mail (i.e. advertising mail) is affected by each of the drivers (economic development, substitution and prices). But the 'substitution'-challenge of direct mail is different from the one for letters. Additionally, past experiences during the deep recession in 2008/2009 showed that marketing budgets, generally, are highly sensitive to economic developments. For this reason we distinguish two effects on direct mail. First, the overall demand effect on advertising, generally, driven by the economic situation and, second, the demand effect on direct mail driven by the quickly emerging use of online media for advertising purposes that results in a redistribution of given marketing budgets to different marketing channels.

**311** See Posten Meddelande AB (2012), Våra brevvanor 2012, Svenskarnas vanor och attityder till fysisk och elektronisk kommunikation, Stockholm, April 2012.

**312** See above.

Figure 3-14 Development of the real GDP (2010-2012)




Source: Eurostat

While in 2009 the European economy dropped heavily (EU-27 minus 4.3 percent)[313] in 2010 most economies achieved high positive growth rates, led by Germany, Sweden and the Slovak Republic (see Figure 3-14). Countries affected by the emerging debt crisis had lower or even negative growth rates (e.g. Greece, Spain, Portugal). Generally, the growth rates continue declining in 2012 (except for Norway). Overall, these developments plus high uncertainties about the future economic development do not create an atmosphere that invites for substantial additional expenses in advertising but more to relocation of existing (or shortened) budgets.

This is confirmed by observations in Germany.[314] Even if the general economic atmosphere in Germany was more positive as in many other countries total expenses in advertising continued declining from more than 83 billion EUR to less than 76 billion EUR in 2011. Generally, advertising via direct mail competes with a number of other advertising media. This includes traditional advertising media like TV, newspapers and magazines and unaddressed advertising mail, as well as the emerging online advertising media via e-mail, internet or SMS. Furthermore, consumers are spending an

313 Eurostat. The Baltic and many Eastern countries were mostly affected but also export-oriented countries like the Nordic countries and Germany. Only Poland had a positive growth rate in real GDP (1.6%).

314 Deutsche Post (2012), Dialogmarketing Deutschland 2012, Dialog Marketing Monitor Studie 24.

increased amount of time surfing the internet and e-advertising is in most cases available at a lower price compared to other advertising media. For these reasons it is not surprising that expenses for online advertising have increased while expenses for other channels have stagnated (e.g. direct mail) or declined. According to a survey conducted by the Dutch Dialogue Marketing Association[315], the importance of addressed and unaddressed direct mail is expected to decrease in the future. In the near future, service providers and advertisers expect to increase their efforts especially with regard to mobile marketing and online communities. Despite this trend, studies still conclude that direct mail will remain an important channel for marketers' multi-channel campaigns. One reason is the positive relationship between e-commerce and direct mail (addressed and unaddressed). In the UK, for example, the mail order and home shopping business is the most important user of direct mail with one quarter of total direct mail expenditures.[316] In Germany, the mail order business was responsible for more than one third of total expenses in the segment.[317]

#### 3.2.1.3 Future prospects

In the last decade, postal service providers have tended to be quite pessimistic about their volume developments – too pessimistic, as it becomes clear in retrospect. Nader/Lintell put it this way in 2008: 'The precipitous decline of total mail volume due to electronic alternatives that has been predicted for more than a decade and continues to be forecast for the years to come has not happened.'[318] After a period of relatively stable volume developments or only minor declines in most countries during the first decade of the millennium, volumes declines have accelerated rapidly. The extent of future volume declines though varies significantly between countries and depends on the specific market conditions and communication behavior. Table 3-2 gives an overview of the range of expected declines.

---

**315** Dutch Dialogue Marketing Association (2011), DM Barometer, De graad van DM bestedingen, 1e kwartaal 2011, p.10 and 19.

**316** Ofcom (2012), The Communications Market 2012, p. 372.

**317** Nielsen (2010), Direct Mail Statusbericht 2009.

**318** Nader, Fouad; Lintell, Michael (2008), Mail Trends Update, Pitney Bowes Background Paper No. 2008-1, February 2008, p. 3.

Table 3-2 Forecasts of letter post volumes

| | Country | Forecast period | CAGR min | CAGR max |
|---|---|---|---|---|
| **Koppe/Hömstreit (2009)** | AT | 2009-2025 | -1.9 % | -5.7 % |
| **WIK-Consult (2011)** | NL | 2010-2020 | -3 % | -6.2 % |
| **Post NL (2013)** | NL (only PostNL) | 2013 | -8% | -10% |
| **Copenhagen Institute for Futures Studies* (2011)** | Europe | 2010-2020 | -2% | -3% |
| **PostNord (2013)** | SE (only Posten) | 2013 | -6% | |
| **PostNord (2013)** | DK (only Post Danmark) | 2013 | -12% | |

Sources: Koppe/Hömstreit (2009): The economic crisis as reinforcement of e-Substitution in the mail market, Abstract for the 17th conference on Postal and Delivery Economics; WIK-Consult (2011), Developments in the Dutch Postal Market, Study for the Ministry of Economic Affairs, Agriculture and Innovation, Directorate-General for Energy, Telecom and Markets The Netherlands; Copenhagen Institute for Futures Studies (2011), Role of Mail 2020, Report prepared for the International Post Corporation by the Copenhagen Institute for Futures Studies; PostNL (2013), Annual Report 2012; Post Nord (2013), Annual Report 2012.

Note: CAGR – Compound Average Growth Rate.

Although each of the studies segments the postal market differently, it is clear that bulk transaction mail will be most affected by volume declines in the future (see Table 3-3). Mail from public institutions and single piece office mail will be affected similarly. Addressed advertisements will not suffer accordingly, a more stable development is expected here. For social mail (C2C), rather slight declines are expected: as substitution in this market segments takes place since telecommunication services came up for the broad public in the middle of the 20th century, the largest share of social communication has already migrated to other channels.

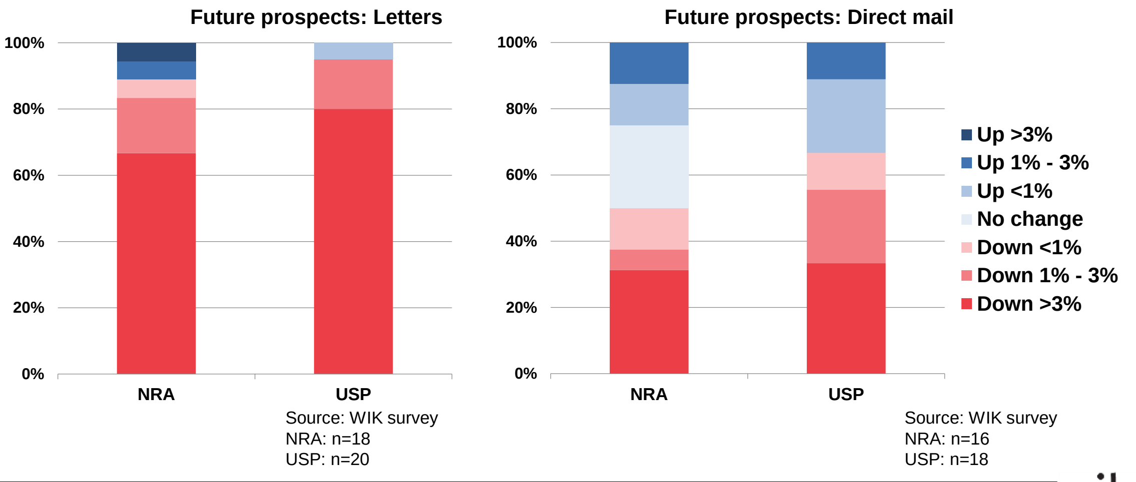
Table 3-3 Forecasts per market segment

| | Segment | Forecast period | CAGR min | CAGR max |
|---|---|---|---|---|
| **Copenhagen Institute for Futures Studies (Europe)** | Transactional mail | 2010-2020 | -3 % | -4 % |
| | Gov2C | | -2.5 % | -3 % |
| | Marketing communication | | -1.1 % | -1.7 % |
| | Media content | | -1.8 % | -2.7 % |
| | Social communication | | -2.3 % | |
| **WIK-Consult (NL)** | Social mail | 2010-2020 | -2.7 % | -5.3 % |
| | Office mail | | -2.6 % | -6.2 % |
| | Transaction mail | | -5.3 % | -9.5 % |
| | Advertising | | -1.6 % | -4.3 % |
| | Periodicals | | -2.1 % | -4.5 % |
| | International mail | | -1.5 % (inbound), -1.5 % (outbound) | -3.9 % (inbound), -4.1 % (outbound) |
| **Koppe/Hömstreit (AT)** | Transaction mail | 2009-2025 | -1.9 % | -5.7 % |

Sources: WIK-Consult (2011), Developments in the Dutch Postal Market, Study for the Ministry of Economic Affairs, Agriculture and Innovation, Directorate-General for Energy, Telecom and Markets The Netherlands; Copenhagen Institute for Futures Studies (2011), Role of Mail 2020, Report prepared for the International Post Corporation by the Copenhagen Institute for Futures Studies

These volume trends are also supported by the estimates of USPs and NRAs in the survey for this study (Figure 3-15). Addressed letters are expected to decline stronger than direct mail, for which some participants expect stable or even slightly increasing developments. For both kinds of mail, USPs tend to be more negative than NRAs.

Figure 3-15 Future prospects for letters and direct mail




Source: WIK survey

The reasons for the lesser decline in the direct mail segment lies in its response rates making it a value-for-money marketing instrument. Together with powerful CRM (customer relationship management) tools and digital printing technology, direct mail has developed from standardized mass mailings to individualized marketing messages in the last few years. Mailers are working on even more individualized mailings allowing to better target customers, not only by offering different products and services to defined customer groups but also by e.g. colouring product images differently according to each customer's favourite. Postal service providers are developing direct mail products combining mail and digital media, e.g. by using QR-codes or vouchers for Internet shops sent by mail. Catalogues tend to be less heavy than before the crisis since target groups become more specific and therefore smaller.

The strong decline of transaction mail (both B2X and Gov2X) that is expected in this decade has been fueled by the economic crisis in 2008/09 when mailers experienced a strong pressure to cut costs. Unlike after earlier economic downturns, volumes did not reach their pre-crisis level for mainly two reasons.[319] First, broadband penetration rates have increased strongly, enabling households, institutions and businesses to conveniently communicate electronically. Second, digital alternatives to mail

**319** See e.g. Copenhagen Institute for Futures Studies (2011), Role of Mail 2020, p. 10.

communication such as online banking or electronic invoices are much more widely spread than ten years before and become increasingly accepted.[320]

A number of companies has established an infrastructure for secure digital communication (see Table 3-9 in section 3.2.5.2). Although current use of most of these digital mail box solutions is low, volumes sent via this channel are expected to increase. Mailers using this channel take a trend-setting decision. The investment necessary for opening up a digital channel for communication with customers and business partners are significant. Since the cost of sending a digital message is so much lower than producing and sending a letter mailers have a strong interest to incentivize receivers to choose this channel. If in addition to these economic incentives pressure to switch is added by legal specifications (as it was the case with e-boks in Denmark) substitution to electronic channels is growing rapidly.

It is unclear whether price increases in the past few years have influenced volumes declines. In some Member States, public tariffs have increased significantly (see section 3.2.5.2). Yet public tariffs apply to a small share of mail volumes only and could be a result of volume declines rather than their source. It seems clear that due to the competition from digital channels price elasticities of mail segments have increased whose elasticity has been small in the past.[321] As long as there was no alternative to mail for sending an invoice, businesses had no choice but to accept price increases. With the emergence of email and other Web-based solutions, invoice senders could migrate to other channels. By contrast, heavy letters may even grow as they benefit from e-commerce. Heavy letters and small packets will especially be used for sending light-weight and small-value items such as electronic accessories, single garments, DVDs or blue-rays.

## 3.2.2 Competition in letter post markets

### 3.2.2.1 Domestic letter post markets

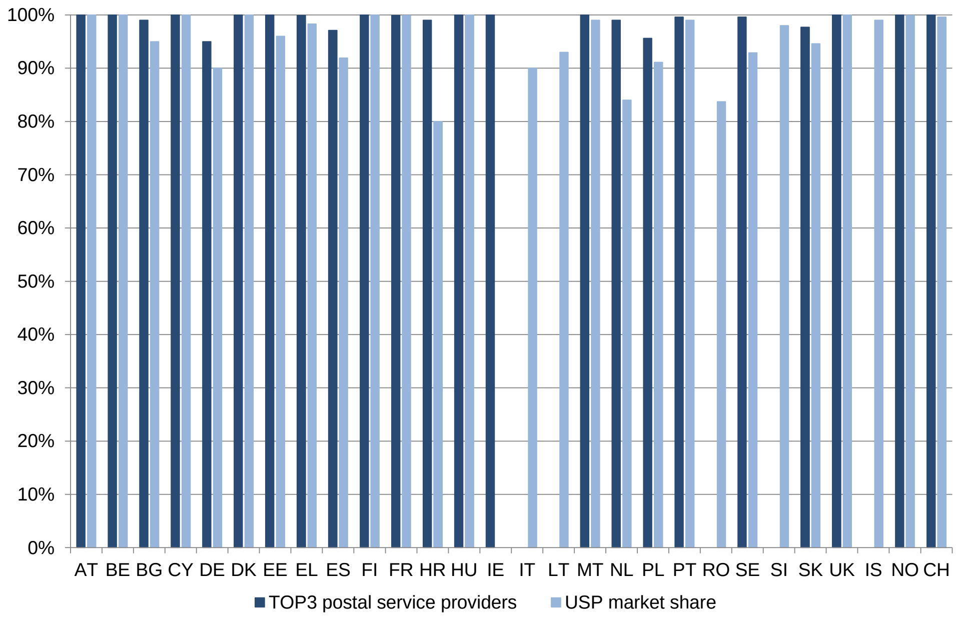
Overall, end-to-end competition in domestic letter post markets remains on a relatively low level (cf. Figure 3-16). USPs' market shares are still very high, even after full market opening in most EU Member States. USPs have a dominant position with a market share (based on revenues) of more than 98 percent in about half of the survey countries, accounting for 31 percent of the survey market (AT, BE, CY, DK, EL, FI, FR, HU, MT, PT, UK, IS, NO, CH). Competitors have gained substantial market shares in

**320** See e.g. Elkelä (2011), Invoicing in 16 European countries, in: M.A. Crew and P.R. Kleindorfer (eds), Reinventing the Postal Sector in an Electronic Age, Cheltenham, UK and Northampton, MA, USA: Edward Elgar, p. 20-35.

**321** See Nikali (2011), Does the level of price elasticity change with the progression of substitution?, in: in M.A. Crew and P.R. Kleindorfer (eds), Reinventing the Postal Sector in an Electronic Age, Cheltenham, UK and Northampton, MA, USA: Edward Elgar, pp. 36-46.

only very few countries. But still, competitor market shares of more than 10 percent (like in NL and DE) are rather the exception than the rule.

Figure 3-16 Market shares (based on revenues) of postal service providers (2011)




Source: WIK survey, NRA answers

Notes: No information from CZ, LU, LV and LI
TOP3 WIK estimate: AT, BE, DE, DK, IE; USP market share WIK estimate: AT, BE, DK
2012 data used for: IT, LT, MT, PT, SE
USP questionnaire used for USP market share in EE, NL

Only few competitors have reached noticeable size which can be observed by comparing TOP3 and USP market shares: a significant difference between TOP3 and USP market shares exists mainly in those countries where competition is strong (e.g. DE, ES, NL and SE). In NL, there is only one major alternative player left since the acquisition of Selekt Mail by Sandd (cf. Case study 3-5). A similar situation like in NL exists in SE where Citymail by far outreaches the market shares of other competitors. But even in these Member States and also in most other countries with at least some end-to-end competition (e.g. BG, EE, EL, HR, SK), competitors are by tendency rather small and typically do not cover the whole territory (except in small or densely populated countries like NL, SK). Competitors therefore begin to ally their forces (cf. Case study 3-6).

Case study 3-5 Consolidation in the Dutch letter post market

The Dutch mail market was fully opened to competition in April 2009. At that time the major competitors in the Dutch mail market were Sandd, a privately owned mail company, and Selektmail owned by Deutsche Post Global Mail with a combined market share of around 14% in 2010. PostNL (formerly TNT Post) offered low budget mail services via its subsidiary Netwerk VSP. The most competitive mail segments were the delivery of advertising mail and periodicals while competition in the delivery of correspondence was (and is) very limited.[322] The Dutch mail market was characterized by substantial price competition in the more competitive market segments and faced declining volume particularly in the delivery of correspondence. Between 2008 and 2011 mail volume declined from 5.3 to 4.5 billion items, a decline of 5.7 percent in average.[323] These general trends promote the consolidation process in the mail market. In the first half of 2011 Deutsche Post sold its loss-making Dutch mail business, Selektmail, to Sandd and decided to finish its activities in the unaddressed mail business (Interlanden). Later in 2011 PostNL decided to shut down the low-budget mail delivery activities of its subsidiary Netwerk VSP and to refocus on the unaddressed mail distribution where Netwerk VSP could improve its market position after the exit of Interlanden. Netwerk's exit from the addressed mail market additionally pushed the market share of Sandd. With Sandd and PostNL there are now two well-established players with nationwide delivery networks and settled customer relations in the mail market. For 2012 PostNL estimates the competitors' market share (mainly Sandd) of about 19 percent.[324] The consolidation process in the Dutch mail market has thus created a duopoly (similar to the Swedish mail market) and reduced the competitive pressure in the Dutch mail market, leaving room for price increases particularly in the business customer segment. PostNL expects price increases well above the inflation rate for single piece items and bulk mail.[325] Due to the continuous decline in mail volume market entry outside existing niches (e.g. local delivery) is not likely.

**322** WIK-Consult (2011), Developments in the Dutch Postal Market, p. 26 ssub., see also OPTA (2012), De Nederlandse postmarkt in 2011.
**323** OPTA (2012), De Nederlandse postmarkt in 2011.
**324** PostNL (2013), Annual Report 2012, p. 13.
**325** PostNL (2013), Q4 & FY 2012 Results Update 2015, slide 13.

Case study 3-6 Cooperation between local mail operators in Germany: CITIPOST Verbund

The CITIPOST Verbund, founded in 2009, consists of 28 local postal operators located in the Northern part of Germany. The cooperation covers around 17 percent of Germany with 11.5 million inhabitants resp. 5.5 million households. The associated postal operators cover both, urban and rural areas. At five days per week the cooperation partners deliver in average half a million items per day via 12,000 delivery routes. In 2012 they delivered around 125 million letter post items in total. The associated companies are mainly subsidiaries of publishing houses starting business many of them starting postal operations fairly before 2004. The CITIPOST Verbund is the first successful cooperation between publishing houses in Germany (taking into account that publishing houses are competitors in their core business). Originally, the publishing houses have extended their delivery activities (early delivery of subscribed newspapers) to delivery of postal items. With increasing mail volumes separate delivery networks, particularly in areas with substantial mail volume, have been launched. Today, they often operate two separate delivery networks, one for the early distribution and one for the daytime delivery of postal items. In 2009 the local postal operators decided to bundle their forces by founding the CITIPOST Verbund GmbH. Each member has the same share in the CITIPOST Verbund GmbH, although they are very differently sized (the smallest delivers around 4,000 items per day while the largest delivery 230,000 items per day). Local public authorities and local companies (e.g. energy suppliers) are the most important customers of CITIPOST associates. Some of the associates also target consumers by launching a network of street letter boxes and by cooperating with local retailers for selling stamps.

Before the CITIPOST Verbund was founded in 2009, each of the local postal operators had had bilateral agreements between neighbouring operators to organize the exchange of mail. This decentralized approach had been accompanied by high transaction costs in terms of money and time. To reduce these costs the associated postal companies concludes an agreement with clearly defined operational arrangements and quality criteria for the mail exchange. Additionally, the CITIPOST Verbund GmbH launched a logistical network to smoothly organize the internal mail exchange.

The network consists of five local and one central hub. Mail addressed to service areas of associated postal operators is transported to the hubs each evening (Monday to Friday). In the night the mail is transported from the local hubs to the central hub where the exchange of mail is organized. In the early morning the mail is then shipped to the destination hubs where the local postal operators pick up the mail for final delivery. The associates pay a small fee per item to the Verbund GmbH for using the logistical services. Mail addressed to destinations outside the CITIPOST service area is handed over individually by each associate either to the Mail Alliance (a nationwide cooperation of local postal operators that organizes transport between the delivery partners), to Deutsche Post or to a consolidator.

The cooperation aims at reducing costs for each associate and, simultaneously, improving the quality of service, particularly to establish a reliable next day delivery service within the service area covered by the associates. The agreement includes rules related to payments between the associates related to the mail exchange, to quality requirements and to the relationship between the associates, particularly a non-competition clause in service areas of associated postal operators. The Verbund GmbH itself is not a profit-maximizing company and does not compete with associates. It merely represents the common interests of its associates and acquires customers located outside the CITIPOST service area. This bundle of rules guarantees the long-term stability of the cooperation.

Source: Interview CITIPOST Verbund GmbH, 30 April 2013

Case study 3-7 The Compador-PostCon case (DE)

German mail consolidator PostCon is owned by TNT Post Deutschland and one of the main competitors of Deutsche Post. In April 2013, instances occurred at PostCon which may be seen as anti-competitive behavior of Deutsche Post and are currently investigated by the competition authority.

PostCon uses sorting machines by Compador, a German enterprise designing and servicing sorting technology. However, at the end of 2012, Deutsche Post purchased Compador. 'Shortly before', according to information PostCon provided to a newspaper, Compador terminated all service contracts for its sorting machines and refused to provide necessary access codes for steering software for the machines.[326] PostCon claims that the sorting machines are therefore of limited use, as errors cannot be solved which causes delays and troubles in the sorting process. In addition to that, Compador is able to read out customer lists, discounts per customer and final prices from the sorting software and thus possesses strongly confidential information about PostCon's core business. PostCon suspects that the termination of the service contracts and Compador's new owner are a move of Deutsche Post to recapture customers and fight back PostCon's market share.

There is only a handful of countries where sustainable competition has evolved (cf. Figure 3-17). Especially in NL and PL, competitors have increased their market share since 2009. Competitors in Spain have reached an exceptionally high market share of more than 18% (volume-based) with Unipost as the largest alternative postal provider covering 70% of the population[327]. Interestingly, Unipost is specialized on direct mail up to 500g but delivers also correspondence, registered mail, small packets and parcels received from its international stakeholder DHL. In Croatia City Ex, owned by the private equity company Bancroft PE since 2011 and delivering more than 60 million documents per year,[328] is another example for a competitor that has successfully entered the domestic mail market.[329]

In DE and SE, competitors have experienced only slight growth. The difficult market conditions for competitors in these countries is also documented by several competition cases.[330] Competitors in PL are optimistic as regards volume developments but seem to face regulatory difficulties when competing against Polish Post (cf. Case study 3-8).

**326** Cf. Der Spiegel (2013), Angriff aufs Herz, Nr. 17, p. 70-72, 22.4.2013.

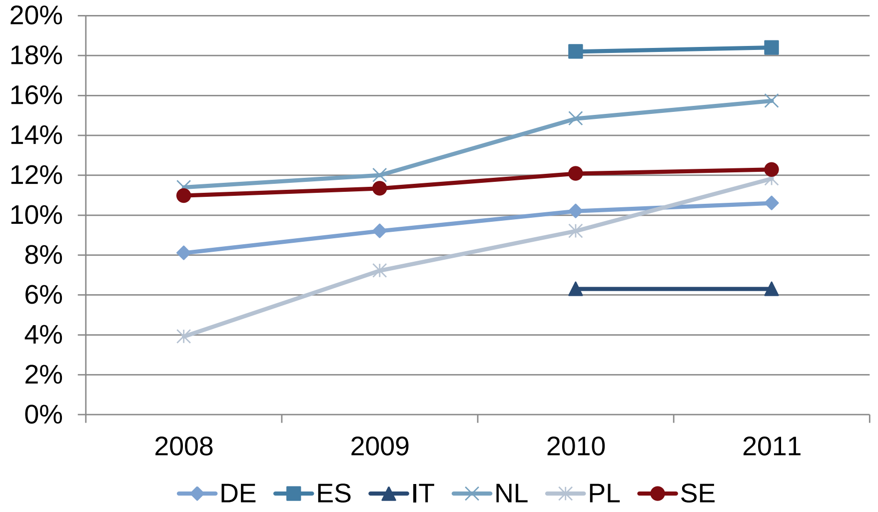
**327** Cf. Unipost website http://www.unipost.es/unipost-en-cifras [5.6.2013].

**328** Cf. Raiffeisen Bank (2011), RIAG advises on the acquisition of 'AE&E Duro Dakovic TEP' and executes the whole sale process of 'City Ex', Press release 1 June 2011. Additionally, it appears that in the past City Ex has delivered bulk mail from business customers in cooperation with the Croatian Post (cf. Partnerhip for Social Development Anti-Corruption Program (2010), Policy Brief: Competition in the Croatian Postal Service Market).

**329** Recently, Austrian Post announced to enter the Croatian mail market by its subsidiary Weber Escal which is the market leader in the distribution of unaddressed advertising in Croatia. Weber Escal and a Croatian postal company 'post d.o.o' merged to Weber Escal & Post d.o.o. (Cf. Die Presse.com, Österreichische Post expandiert in Kroatien , 17 April 2013 http://diepresse.com/home/wirtschaft/international/1390123/Oesterreichische-Post-expandiert-in-Kroatien).

**330** See section 2.3.1.1 for more detailed information on the application of competition rules and relevant competition cases.

Figure 3-17 Evolution of competitors' market share in selected countries (volume based)




Source: NRA questionnaire and market surveys of NRAs in DE, ES, NL, PL

Case study 3-8 InPost, successful market entrant in the Polish letter post and parcel market

InPost delivers letters and parcels to about 75 percent of households in Poland. Until full market opening in 2013, InPost bypassed the monopoly for letters up to 50 gram by inserting small metal tiles into letters below 50g. The company delivered 194 million items of correspondence, and nearly 2 million parcels. In 2013, InPost forecasts that volumes will increase up to 230 million letters and up to 5 million parcels. Letter and parcel services are offered to both business senders (for parcels mainly e-retailers) and individual customers who can access InPost's services via its 1,000 customer service points. B2C parcels are delivered to automated parcel stations ('Paczkomaty InPost') where receivers can collect their parcels. There are currently 650 automated parcel stations in medium-sized and large cities.

According to information received from InPost, even after full market opening the new postal law (entered into force on 1 January 2013) imposes obstacles to a level playing field for all postal service providers. According to InPost, the USP does not grant access to elements of the postal infrastructure. In addition, different rules for VAT apply to the USP and other postal operators. Polish VAT regulation frees certain services of the designated universal service provider from VAT. Services exempt from VAT are not only universal postal services but also services which are closely related to those services. This is interpreted factually as letter post services for senders with less than 100,000 items per year. These (in fact quite large) senders therefore benefit from a tax exemption intended for universal postal services. InPost also pointed out that in 2012, shortly before full market opening, many public senders accomplished public procurements for postal services with exceptionally long contract durations of up to eight years, and whose procurement terms were designed so that only Polish Post could fulfill them.

Source: InPost

Upstream competition, i.e. competition from postal operators who access the network of an incumbent service provider for delivery, can be found in several countries either in addition to end-to-end competition (e.g. in DE and ES) or exclusively (as it is the case in UK and FR). Consolidators who collect mail from different customers and hand it over to the USP for delivery still face discrimination and transparency issues (e.g. in BE, FR).

Whereas postal incumbents loose direct contact to the customer for those volumes that are consolidated by competitors, they still keep a substantial part of the postal value chain. In DE, this has resulted in a different policy of Deutsche Post as regards discounts for pre-sorted mail. While at the outset of consolidation in DE, discounts for pre-sorted mass mailings were quite low, the incumbent increased these rebates during the last years in several steps, from 21 percent in 2007 up to 40 percent in 2013. This move provided an incentive for senders to either sort the mail themselves or hand it over to a consolidator, and makes it more difficult for end-to-end competitors to compete with price. High rebates for pre-sorted mail have also favoured upstream competition in the UK where up to date only a single competitor is planning to offer end-to-end services (TNT Post UK).

#### 3.2.2.2 Cross-border letter post markets

Competition for cross-border letter post is very different for individual senders and business customers. Individual senders in most cases have no choice but to send international mail with their national USP. Volumes from this target group are too low to attract market entry from alternative operators.

There is more competition for cross-border letters from business customers. However, we did not observe much change in competition in this segment since 2010. There are seven small countries that have only opened cross-border markets in 2013 (CY, HU, LU, LV, MT, PL, HR) and SK and PT in 2012, so there might be changes ahead in these countries.

The segment is dominated by national postal service providers from other countries that compete for customers with large cross border volumes. There are some national USPs from Western European countries with representations across Europe but the vast majority of USP, especially those from small countries, does not offer cross-border letter post services except in their home markets. The largest providers of cross-border letter post are Spring Global Mail (a joint venture of Royal Mail and TNT), Asendia (joint venture of La Poste and Swiss Post, cf. **Fehler! Verweisquelle konnte nicht gefunden werden.**) and Deutsche Post Global Mail. There are very few private operators who are independent from other USPs. France-based IMX is the only provider of cross-border letter services with significant market share. Their national coverage is shown in Table 3-4. Apart from these four providers, some USPs from

smaller countries offer cross-border letter post services in single countries, typically neighbouring countries (e.g. Austrian Post International in Germany).

Table 3-4 Coverage of selected providers of cross-border letter post services

| | AT | BE | DE | DK | ES | FI | FR | IE | IT | NL | PT | SE | UK | NO | CH |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Asendia | ■ | ■ | ■ | ■ | ■ | ■ | | | ■ | ■ | | ■ | ■ | ■ | |
| Deutsche Post Global Mail | ■ | ■ | | ■ | ■ | | ■ | ■ | ■ | ■ | ■ | | ■ | | ■ |
| IMX | | | | | ■ | | ■ | | ■ | | | | ■ | | |
| Spring Global Mail | ■ | ■ | ■ | | ■ | | ■ | | ■ | ■ | | | ■ | | ■ |

Source: Provider homepages and annual reports

Table 3-4 illustrates that competition intensity is very different according to country. Where more than one provider of cross-border letter post services is active (in addition to the national USP), customers have a real choice. The example of ES, where cross-border mail has only been liberalized in 2011, shows that competition can evolve fast once the market is opened.

By comparison with the competitive situation in domestic letter post markets, it becomes clear that competition for cross-border letter post is much more intense. In BE, DK, FR, UK and CH, at least two cross-border service providers are competing with the national USP while there is no (end-to-end) competition for domestic mail. However, this is mainly the case for larger cities or densely populated regions due to the fact that cross-border service providers do not maintain a nationwide access network but typically collect the mail directly at the customer’s premises. There is still a large number of countries where none of the large cross-border service providers for letter mail is active (BG, CY, CZ, EE, EL, HU, LT, LU, LV, MT, PL, RO, SI, SK, IS, LI, HR). Senders in most of these countries are bound to send international letter mail with their national incumbent postal service provider.

Case study 3-9 Joint Venture La Poste – Swiss Post (Asendia)

In May 2012 the French group La Poste and the Swiss Post group notified a newly founded joint venture company Asendia at the Commission according to the rules of the merger control.[331] According to the notification La Poste and Swiss Post will contribute their respective international mail activities, except for the inbound and outbound mail activities currently carried out by La Poste in France and by Swiss Post in Switzerland, by way of purchase of shares.

The joint venture shall focus on the following business activities:

- cross-border outbound business mail activities,
- mail preparation services (UK and Austria),

**331** European Commission, Case COMP/M.6503 — La Poste/Swiss Post/JV, Prior Notification of a concentration, OJ C144/9, 23.05.2012.

- marketing for print media,
- contract logistics for print media distribution,
- logistics services (Italy),
- express delivery services as well as freight forwarding and
- international standard business-to- consumer parcel delivery in the UK.

The rationale behind the joint venture is to reach a stronger position in the market for international letter post services that was characterized by gradual volume decline in the last years. However, the chief executive of Asendia found, that volume decline in international mail has slowed recently and that the shrinking transactional mail segment appears to be compensated by growth in direct mail, catalogues and small goods.[332] The company aims at focusing on the US, the UK and the German markets and particularly on international B2C delivery targeting the e-commerce segment for light-weight parcels up to 2 kg.

### 3.2.3 Access to universal service

#### 3.2.3.1 Postal outlets

In 2011, there were 120,925 postal outlets of USPs in the survey countries, thereof 116,030 in EU Member States.[333] The overall number of postal outlets has remained largely stable with only slightly falling figures. The decrease of postal outlets amounted to 1.6 percent compared to 2010 for the survey countries (the same applies for EU Member States). This change rate matches the average annual decline of postal outlets in the EU-25 countries between 1998 and 2007 of 1.1 percent.[334]

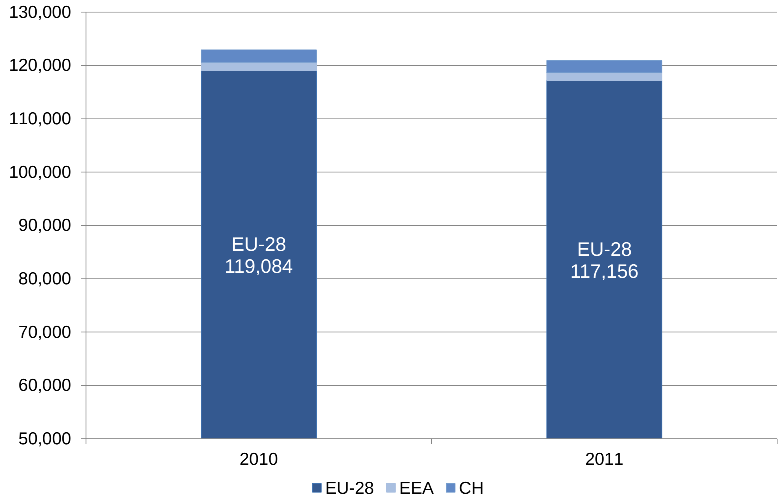
The reduction of postal outlets in the EU has thus continued on its path although there have been changes substantially deviating from average decline in some countries in Southern and Eastern Europe, e.g. in Estonia (minus 5.7 percent), Lithuania (minus 2.2 percent), Portugal (minus 11.6 percent) and Romania (minus 16.2 percent). The number of postal outlets remained stable in the Nordic and Western European countries where USPs have mostly accomplished re-organisation of their access networks. On average, there was one postal outlet for 4,413 inhabitants in the survey countries in 2011.

**332** Post & Parcel (2012), ASENDIA: A Vision for Global Mail, 18 September 2012, http://postandparcel.info/50599/in-depth/asendia-a-vision-for-global-mail

**333** This figure does not include data for LI. Data on postal outlets in 2012 were not available for all survey countries.

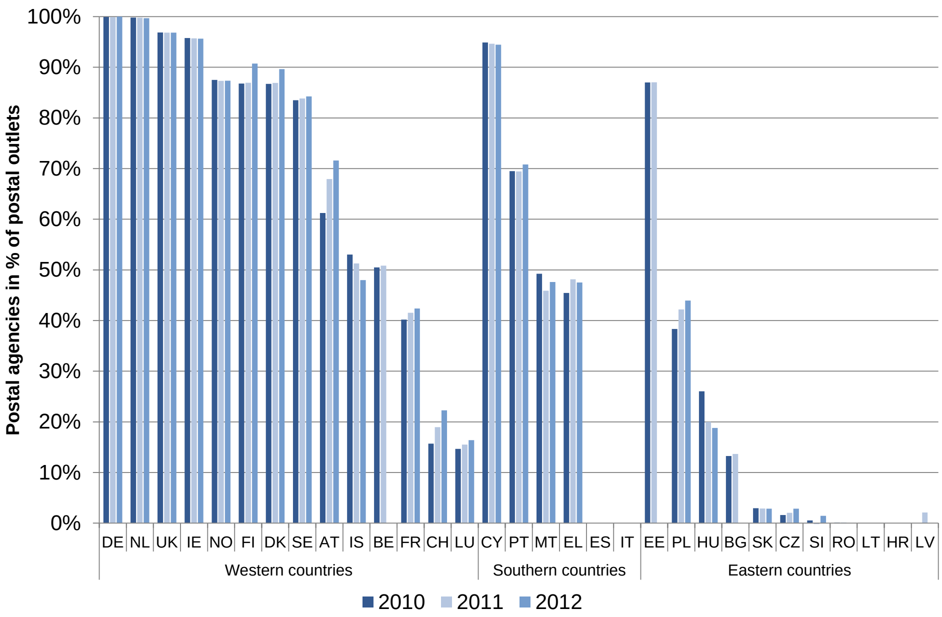
**334** Cf. WIK-Consult/ITA Consulting (2009), The Evolution of the European Postal Market since 1997, August 2009.

Figure 3-18 Total number of postal outlets




Source: WIK survey

Figure 3-19 Share of postal agencies of USPs




Source: WIK survey and WIK research

Notes: No data for LI, LV only 2011 data.

The strongest increase of postal agencies between 2010 and 2012 can be observed in some Western European countries which have not yet organized all of their postal outlets as agencies, e.g. Austria (23 percent), France (5 percent) and Switzerland (40

percent). There are also some Eastern European countries where the share of postal agencies has increased. With the exception of the Estonian and the Polish USPs, the use of agencies generally remains on a relatively low level in the Eastern European countries. The USPs in Spain and Italy even exclusively rely on post offices.

USPs in Western Europe can be grouped into two categories. On the one hand, there are those with exclusively or a high share of postal agencies in their networks. These are especially the Nordic countries, Germany, Ireland and the UK. Austria is at the verge of transition from the second group to the first: during the last few years, Österreichische Post has substantially increased its share of agencies. On the other hand, there are the francophone countries (FR, BE and CH) with relatively low shares of postal agencies. The provision of financial services by USPs (e.g. in FR and CH among the Western countries and in IT among the Southern countries as well as in many Eastern European countries) also plays a role: These services are difficult to provide in postal agencies due to security reasons. Shops and supermarkets would have to invest in security equipment in order to provide postal and financial services as an agency. The Austrian USP in this respect chose a way to reconcile agencies with provision of financial services. About one third of its agencies are run in cooperation with the Austrian bank BAWAG P.S.K.[335]

The development of postal agencies in the Eastern European countries is also influenced by regulatory restrictions. The decisive freedom of operators is narrowed by, in some cases, very detailed regulation on the organization of the network of postal outlet (cf. Case study 3-1). This leaves very little flexibility to operators.

Case study 3-10 Access network regulation in SK

In Slovakia, opening hours of postal outlets in residential units and villages of different sizes are exactly prescribed by the requirements for the quality of the universal service.[336] The following requirements apply in regions with:

- less than 3 000 inhabitants: not less than 3 hours every working day, once per week until 5 p.m.
- 3 001 to 5 000 inhabitants: opening hours at least from 8:30 a.m. to 3 p.m.
- 5 001 to 10 000 inhabitants: opening hours from 8:30 a.m. to 4 p.m.
- 10 001 to 50 000 inhabitants: opening hours from 8 a.m. to 5 p.m.
- over 50 000 inhabitants: opening hours from 8 a.m. to 6 p.m., at assigned post office from 7:00 o´clock.

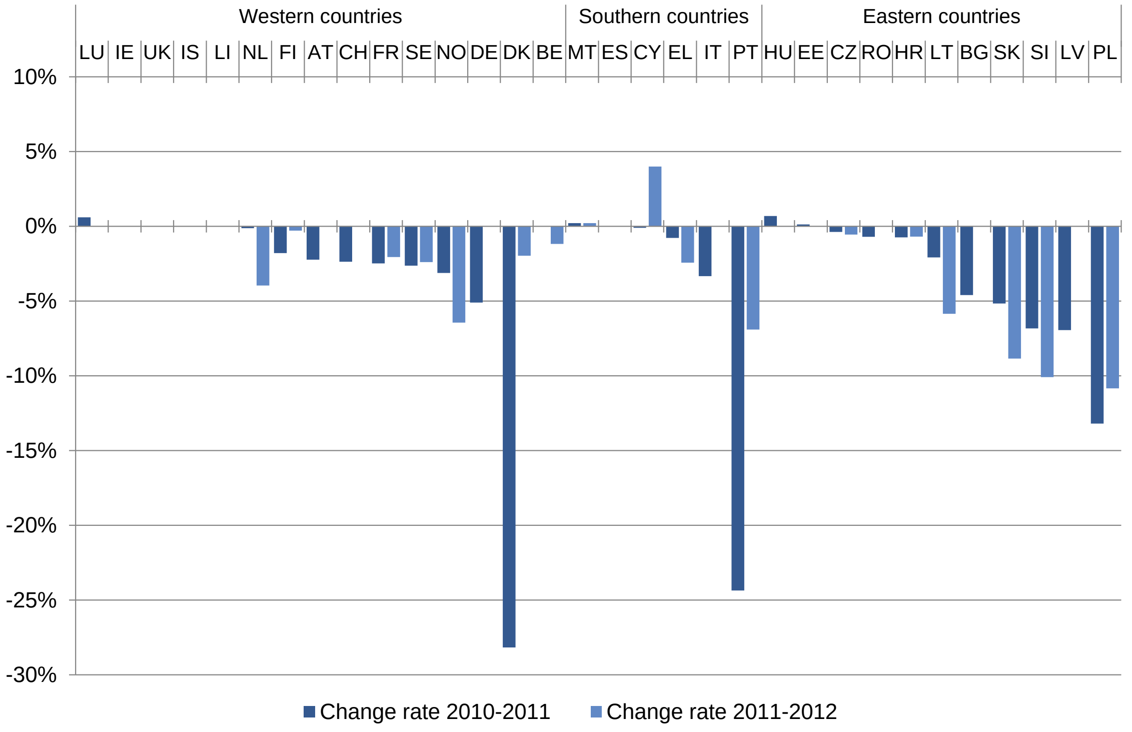
In addition, Slovak Post has to inform its regulator in advance on changes of the access network which the regulator has to examine. It may then disapprove of the planned changes it the regulator decides that the requirements for the quality of the universal service are violated.[337]

**335** Cf. Österreichische Post (2013), Geschäftsbericht 2012, Das Magazin, p. 30.
**336** Art. 5 (1) of the Requirements for the quality of the universal service, no. 240/001/2012.
**337** Postal License No. 1223/020/2002 from 27. December 2002 to Slovak Post.

### 3.2.3.2 Public collection boxes

The total number of public letter boxes in the survey countries has been reduced slightly from 2010 to 2011 by 2 percent, the same reduction could be observed for EU-28. There were 735,177 public collection boxes in 2011.

Figure 3-20 Change rate of public collection boxes




Source: WIK survey

Notes: BE – no change rate for 2010-2011; AT, BG, CH, CY, EE, IT, LI, LU, LV, RO – no change rate for 2011-2012

There are several countries from all three country groups (Western, Southern and Eastern European countries) where the number of public collection boxes has remained stable since 2010 (EE, ES, IE, MT, UK, IS and LI). On the contrary, USPs in some Member States have considerably reduced their public collection boxes, by more than 5percent (DK, LT, LV, PT, PL, SI, SK and NO).

*Access to universal services provided by competitors*

Competitors in the letter post market have created a noticeable number of access points and street letter boxes only in Germany where end-to-end competition for private and small business customers exists. Competitors in other countries with a substantial share of competition target larger business customers whose mail is collected at their

premises. According to Bundesnetzagentur, German competitors provided 24,225 access points in 2011.[338] However, access points of parcel service providers are also included in this figure. The number of outlets from letter post competitors would be much lower (less than 10,000 outlets). German competitors also provided 5,481 public collection boxes for letters. These boxes are mostly located in areas with a high density of (small and middle-sized) businesses who do not have sufficient mail to qualify for collection at their premises.

### 3.2.4 Financial effects of volume decline on postal operators

After a period of relatively stable volume developments in most countries during the first decade of the millennium, volume declines have accelerated rapidly. However, as outlined in section 3.2.1.1 demand developments substantially vary among the European countries and depend on the specific market conditions and communication attitudes. Particularly many Western countries are affected but also many Eastern and Southern countries that are additionally challenged by an ongoing decline in economic activity.

The decline in letter post volume may substantially affect the economic situation of postal operators. The immediate effect of declining volumes are shrinking revenues. In combination with a substantial share of fixed costs in letter post operations this results in reduced profitability or even losses.

This section presents a simple economic model that estimates the financial impact of volume decline on a stylized postal operator. The model shall illustrate the potential effects on costs and revenues and highlights the necessity to improve cost flexibility in postal operations. It focuses on letter post operations and does not take any overlaps with parcel operations into account that may countervail the decline in profitability (e.g. due to joint delivery of parcels and letter post in rural areas). Additionally, the model addresses only changes in revenues and costs and does not give indications on the respective levels.

*Model outline*

We use the general cost model of postal services developed by Cohen et al. (2002)[339] and Cohen et al. (2004)[340] that considers the relation between average unit costs and letter post volume per capita (‘pieces per capita’). The model distinguishes between four activities: mail acceptance in post offices and collection from public collection boxes,

**338** Cf. Bundesnetzagentur (2013), Marktdaten 2008-2011.
**339** Cohen, Robert, Carla Pace, Antónia Rato, Matthew Robinson, Ricardo Santos, Gennaro Scarfiglieri, Vincenzo Visco Comandini, John Waller and Spyros Xenakis: ‘Towards a General Postal Service Cost Function’, mimeo, US Postal Rate Commission, 2003.
**340** Cohen, Robert, Matthew Robinson, Gennaro Scarfiglieri, Renee Sheehy, Vincenzo Visco Comandini, John Waller and Spyros Xenakis: ‘The Role of Scale Economies in the Cost Behavior of Posts’, Wissenschaftliches Institut für Kommunikationsdienste (WIK), 8th Königswinter, 2004.

mail processing costs, transportation and delivery. It assumes that the costs of these activities depends on two components: letter post volume and the size of the network. Each activity contains volume driven variable costs and network-size driven fixed costs, whereas the size of the network is approximated by the population. The cost function of a stylized postal operator for activity *i* is given by

$$C_i = \underbrace{a_i * V}_{\text{variable costs}} + \underbrace{b_i * P}_{\text{fixed costs}}$$

The coefficient $a_i$ determines the variable costs in relation to the letter post volume $V$ and the coefficient $b_i$ the fixed costs in relation to the population $P$. It is a linear cost function that implicitly assumes continuous fixed costs i.e. neglects the possibility of step costs. Total costs are the sum of activity costs, weighted by their shares on total costs $s_i$:

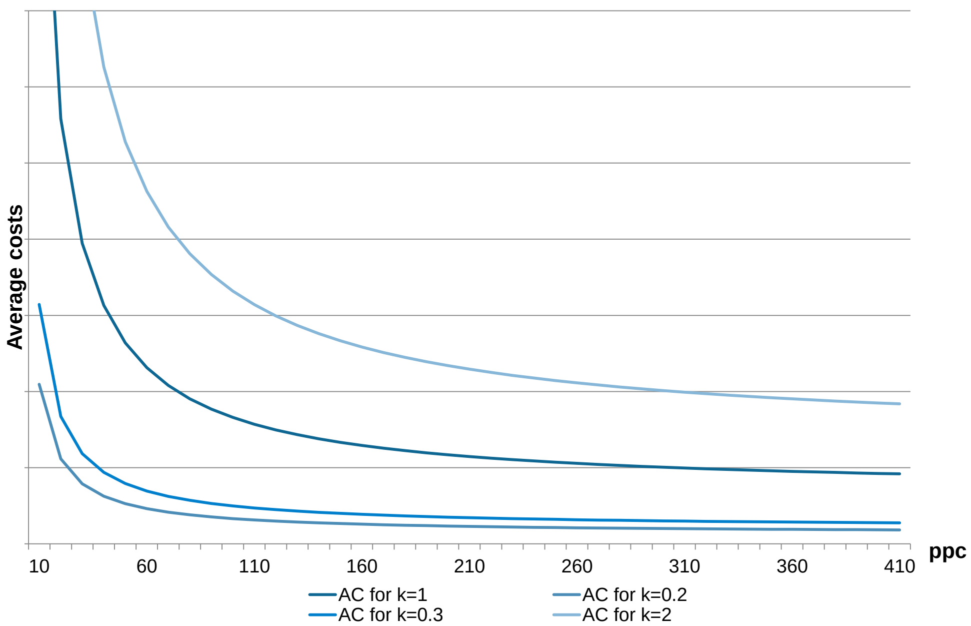
$$C = \sum s_i C_i.$$

Average costs are total costs divided by letter post volume. Pieces per capita are total volume divided by population. The cost function can be transformed to

$$AC_i = a_i + \frac{b_i}{ppc} \quad \text{and} \quad AC = \sum s_i AC_i$$

to determine average costs *AC* per activity $i$ and, subsequently, total average costs with pieces per capita $ppc = \frac{V}{P}$.

Figure 3-21 Average cost curves in relation to pieces per capita




Source: WIK-Consult.

Figure 3-21 illustrates the shape of the average cost curve. Basically, how average costs are affected by volume decline depends on the initial letter post volume. While average costs increase slightly in case of initially high letter post volume per capita (flat part of the function), they explode in case of initially low per capita volume (steep part of the function). This effect is caused by the fixed costs of the network (‘fixed cost regression’).

Figure 3-21 also illustrates that the relative change in average costs is independent from the absolute cost level that is indicated by the cost adjustment parameter *k*.

Given that each postal operator *j* have the same basic cost function that only varies in the cost level, indicated by *k*.

$$C_j = k_j\, C \quad \text{and} \quad AC_j = k_j\, AC$$

Example: For two operators, one with the cost level indicated by *k=1* and the other with *k=0.3* (e.g. because of lower labour costs per hour), this means that the cost level of the second postal operator is only 30 percent of that of the first post operator given that both postal operators manages the same letter post volume per capita. If mail volume declines the average costs of the low-cost operator increases less in absolute terms so that the ‘explosion effect’ starts later (i.e. at a lower level of pieces per capita). In the example for the first postal operator it starts at around 100 pieces per capita while for

the low-cost operator it starts at around 60 pieces per capita. However, the relative effect on average costs is for both operators the same.

The relative change in average costs per activity *i* in case of a relative change in letter post volume of *x* percent is given by

$$\Delta^{\%} AC_i = \frac{a_i + \frac{b_i}{ppc(1-x)}}{a_i + \frac{b_i}{ppc}} - 1$$

which only depends on the coefficients that determine the variable and fixed costs and on the pieces per capita but not on the cost adjustment parameter *k*. This shows that the relative change on average costs is independent from the operators' absolute cost levels. Overall, this model delivers results that neither depend on the network size nor on the absolute cost level of the postal operator.

*Model calibration*

Domestic mail operations in Europe are heterogeneous in terms of i.a. population density, mail demand and universal service requirements (notably delivery frequency per week). In this model we abstract from this heterogeneity by modeling a cost function of a stylized postal operator and normalizing the network size (i.e. population) $P$ and total costs $C$ to 1. Further, we assume that this postal operator delivers 150 pieces per capita per year which roughly corresponds to the average letter post items per capita in all Member States.

Table 3-5 Parametrisation of the model: Cost shares and elasticities at the level of 150 pieces per capita

| | Share of total cost | Cost elasticity w.r.t. volume |
|---|---|---|
| **Delivery** | 45% | 0.40 |
| **Mail processing** | 20% | 0.80 |
| **Transportation** | 10% | 0.75 |
| **Mail acceptance & collection** | 10% | 0.50 |
| **Other** | 15% | 0.30 |
| **Total** | 100% | 0.51 |

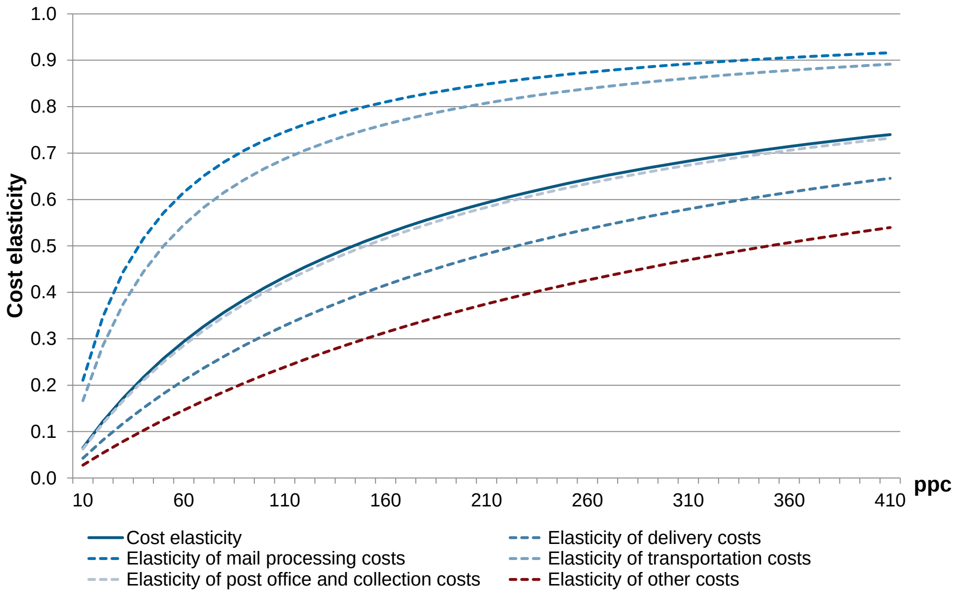
Source: WIK-Consult.

Based on data of the American postal operator USPS, desk research[341] and discussions with European postal operators[342] we set the cost shares (*s*) of the core actvities and their cost elasticities as presented in Table 3-5.

**341** See for example NERA (2004), Economics of Postal Services: Final Report, p. 78.
**342** Meeting with PostEurop, 27 June 2013.

The cost structure in terms of cost share per core activity shows that delivery costs are the most important cost category followed by mail processing. The cost elasticities indicate the cost variability related to volume changes. The cost elasticity of 0.4 in delivery activities means for example that if volume declines by 10 percent delivery costs would decline by only 4 percent.

Figure 3-22 Cost elasticity of different activities (w.r.t. volume)




Source: WIK-Consult.

The level of the cost elasticities depends on the mail volume per capita, i.e. they rise with increasing pieces per capita which is illustrated in Figure 3-22. Vice versa, the lower the pieces per capita the lower the cost variability of the activity. As the elasticities vary among the activities this also changes the overall cost structure in terms of cost share per activity. Delivery costs would become more, mail processing less important in terms of cost shares if mail volume declines.

*Results*

Table 3-6 Effect of volume decline on average costs

| Effect of 10 % volume decline | Initial mail volume (pieces per capita) | | | |
|---|---|---|---|---|
| | 50 | 150 | 250 | 350 |
| Change in average costs | 8.2% | 5.4% | 4.1% | 3.2% |
| Change in average delivery costs | 9.1% | 6.7% | 5.3% | 4.3% |
| Change in all other costs | 7.4% | 4.4% | 3.2% | 2.5% |
| Share of delivery costs in total costs | 50.4% | 45.5% | 43.0% | 41.5% |
| (relative change of cost share) | (0.8%) | (1.2%) | (1.2%) | (1.1%) |
| Share of mail processing costs in total costs | 13.7% | 19.4% | 22.3% | 24.1% |
| (relative change of cost share) | (-3.2%) | (-3.1%) | (-2.5%) | (-2.1%) |
| Share of transportation costs in total costs | 7.4% | 9.7% | 11.0% | 11.7% |
| (relative change of cost share) | (-2.5%) | (-2.5%) | (-2.1%) | (-1.8%) |
| Share of mail collection & acceptance costs in total costs | 10.1% | 10.0% | 10.0% | 9.9% |
| (relative change of cost share) | (0.1%) | (0.1%) | (0.1%) | (0.1%) |
| Share of other costs in total costs | 18.4% | 15.3% | 13.7% | 12.8% |
| (relative change of cost share) | (1.4%) | (2.2%) | (2.3%) | (2.2%) |
| Change in total costs | -2.6% | -5.1% | -6.3% | -7.1% |

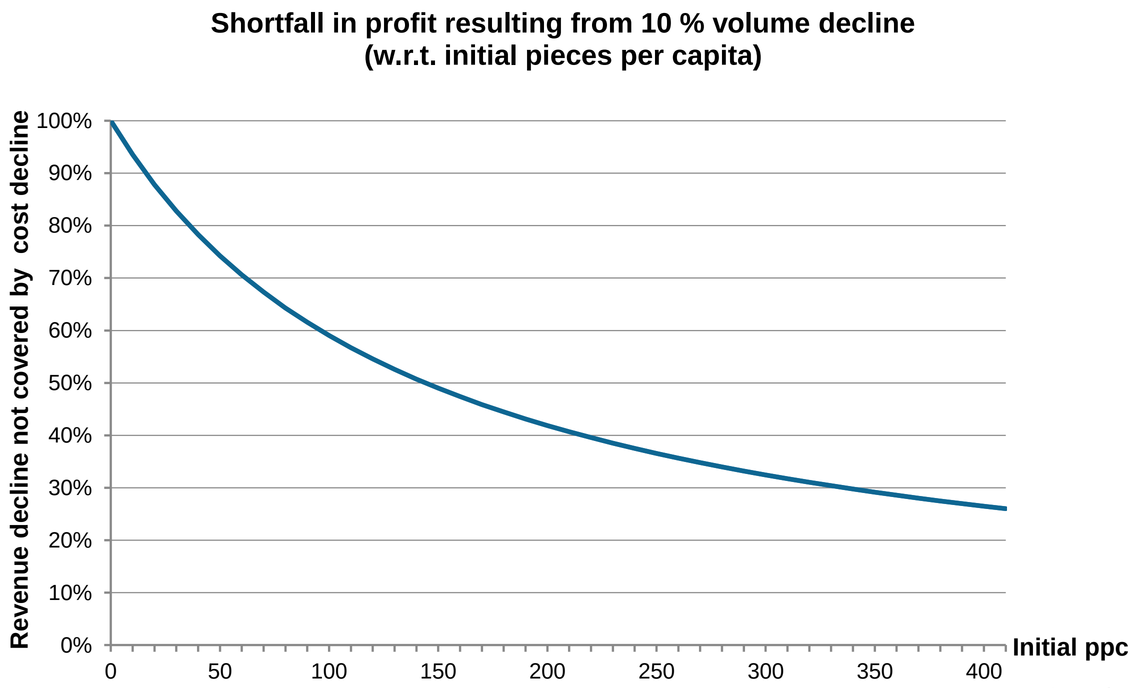
Source: WIK-Consult.

Table 3-6 presents the results of the model for a 10 percent volume decline for different initial mail volumes, i.e. pieces per capita. It is evident that the effect of volume decline on average costs is higher if initial mail volumes are low and vice versa. The increase in average costs is primarily driven by the increase in average delivery costs and the share of delivery costs on total costs.

Furthermore, smaller providers with a lower initial mail volume face a higher impact on their average costs as they operate on the ‘steeper’ part of the average cost curve where fixed cost regression becomes more an issue. As a result, decline of total cost is lower compared to postal operators with higher initial mail volumes.

Assuming that volume decline is equally distributed over the different mail products, and therefore the relative change in volume decline equals the revenue decline, we derive the difference between change in revenues and change in costs and, as a result, the effect of volume decline on profits.

Figure 3-23 Effect of volume decline on profits




Source: WIK-Consult

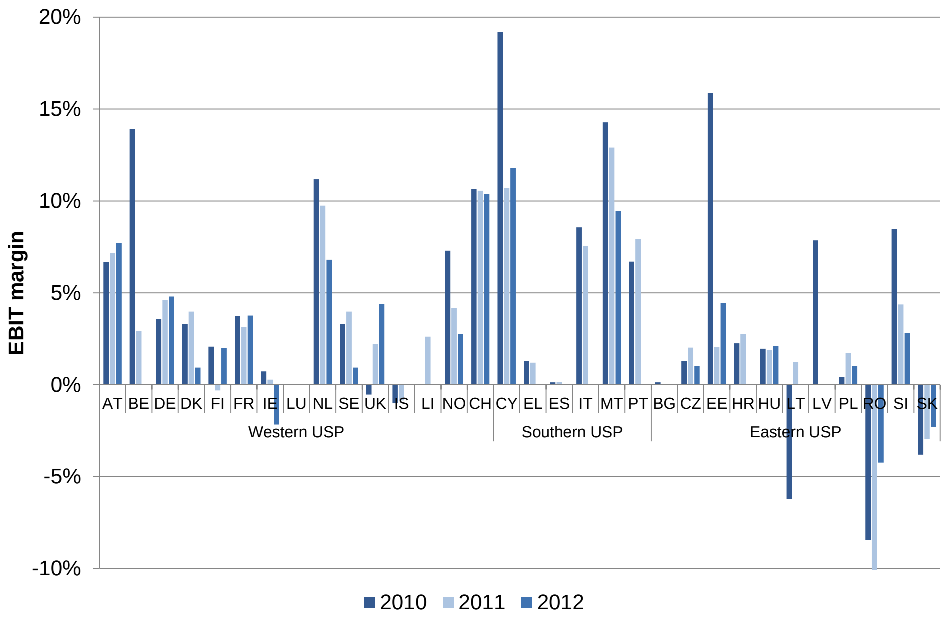
Figure 3-23 illustrates the relative change in profits resulting from a 10 percent volume decline subject to the initial mail volume. As costs decrease less than proportional, profits decrease more than proportional. The difference between the change in profits and the change in mail volume illustrates the percentage of revenue decline which is not covered by cost decline, i.e. the loss of the stylized postal operator assuming an initial break-even. For example, a postal operator with 250 pieces per capita and a volume decline of 10 percent would face a 10 percent decrease of revenue whereas total costs only decrease by 6.3 percent. Hence, only a part of its revenue decline would be compensated by lower costs and consequently profit would decrease by 3.7 percent of total cost. Furthermore, Figure 3-23 shows that the effects of a persistent volume decline on profits increase more than proportional and that the negative effect on profits accelerates.

### 3.2.5 Meeting the challenges: Business strategies of key market players

#### 3.2.5.1 Financial situation of postal operators

Postal operators in letter post markets face substantial challenges due to economic decline and the changing demand behaviour and the expected erosion of their core business. The effect on the financial situation of a stylized postal operator is highlighted in section 3.2.4. Now we look at the empirical evidence i.e. the profitability of incumbent postal operators between 2010 and 2012.

Figure 3-24 Profitability of USPs (EBIT margin, total business)




Source: WIK survey and WIK research (annual reports)

Note: Post Danmark and Swedish Posten – Group results of PostNord; ROUSP: 2011: -14%

The developments in profitability of the universal service providers, measured by the EBIT (Earnings Before Interest and Taxes) margin in relation to total revenues, is mixed. Some USPs are very profitable while others have very low margins or are even loss-making.

- The majority of the Southern USPs (except for the ELTA and Correos) is highly profitable. Particularly, Portuguese CTT Correios has improved its EBIT margins from 2010 to 2011 despite of the difficult economic environment (the Portuguese government plans CTT Correios plans IPO for this year). In contrast, Spanish Correos and Greek ELTA have very low margins. Poste Italiane is also very

profitable, however, the major contribution comes from the financial and insurance business and not from postal operations.

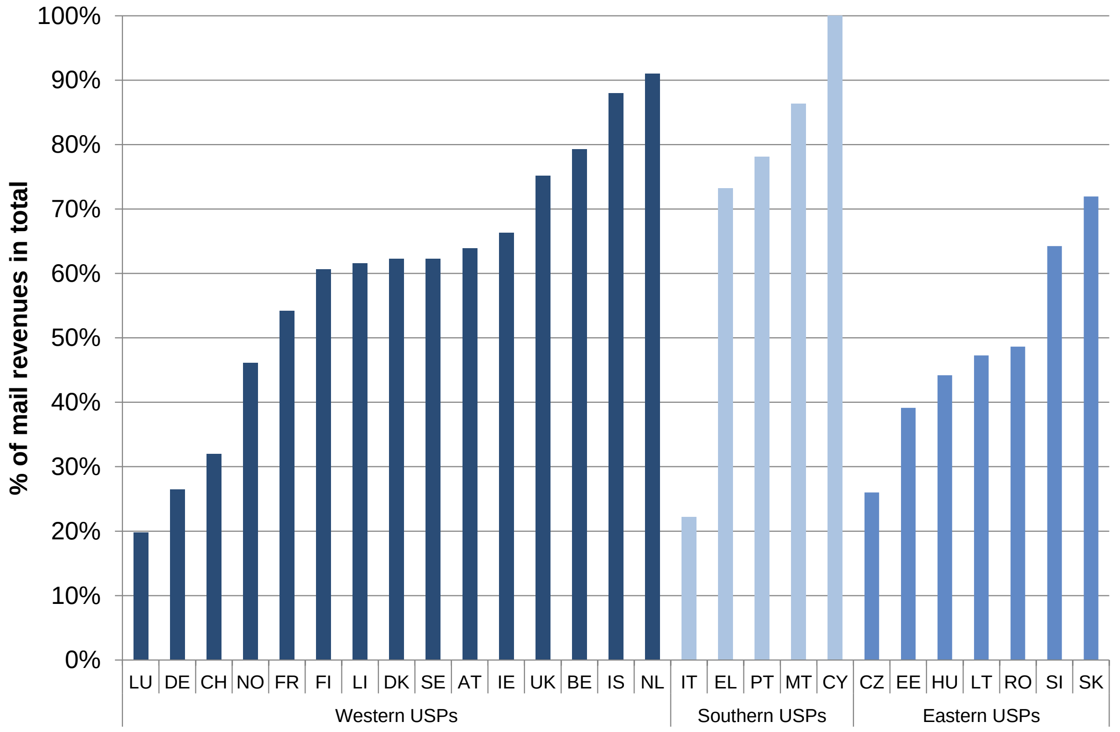
- The Eastern USPs have generally low EBIT margins of below 5 percent or are even loss-making (Romanian Post and the Slovak postal operator), Eesti Post has improved profitability from 2011 to 2012.

The picture is mixed for the Western USPs:

- In this group Swiss Post has the highest and relatively stable EBIT margin with more than 10 percent.
- Deutsche Post DHL, Austrian Post and Royal Mail reported improving profitability.
- The EBIT margins of the remaining Western USPs are under pressure. An Post, PostNL and the postal operators of the Nordic countries (PostNord, Norway Post, Iceland Post and Finnish Itella) have declined, An Post and Iceland Post, both highly dependent on letter post revenues, are even loss-making in 2011 and 2012.

During the last decade many of these postal operators have already started to reduce the dependency on their letter post business.

Figure 3-25 Share of mail revenues in total revenues (2011)



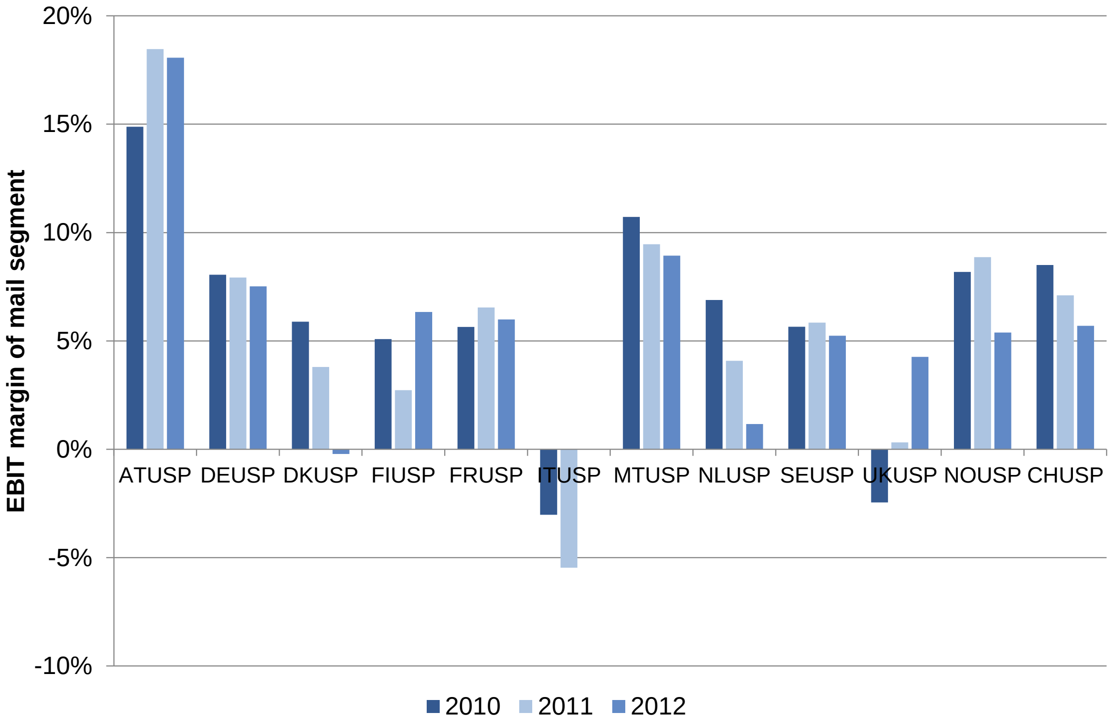

Source: WIK survey and WIK research (annual reports)

Note: No segment information: Correos (ES), Bulgarian Post, Latvian Post, Polish Post, Croatian Post, Liechtenstein Post.
Post Danmark and Swedish Posten – Combined mail revenues of PostNord
Mail revenues include revenues for parcel services (excluding express): Deutsche Post DHL (DE), Royal Mail (UK)
Mail revenues of An Post (IE) exclude revenues from cross-border mail between UK and Ireland.

However, many postal operators still depend on letter post revenues with shares of more than 60 percent of total revenues. However, overtime the importance declined particularly at Western universal service providers for different reasons:

- Expansion in international parcel, express and logistics operations (e.g. Deutsche Post DHL, Austrian Post, La Poste (Geopost/DPD), Royal Mail Group (GLS), Eesti Post, CTT Correios);
- Expansion in financial services (notably La Poste Group, Swiss Post and Poste Italiane);
- Many Eastern universal service providers earn a substantial share of its revenues with postal financial services;
- P&T Luxembourg is the only universal service provider that has postal and telecommunication services under one umbrella.

Figure 3-26 Profitability of USPs' mail segments (EBIT margin)




Source: WIK survey and WIK research (annual reports)

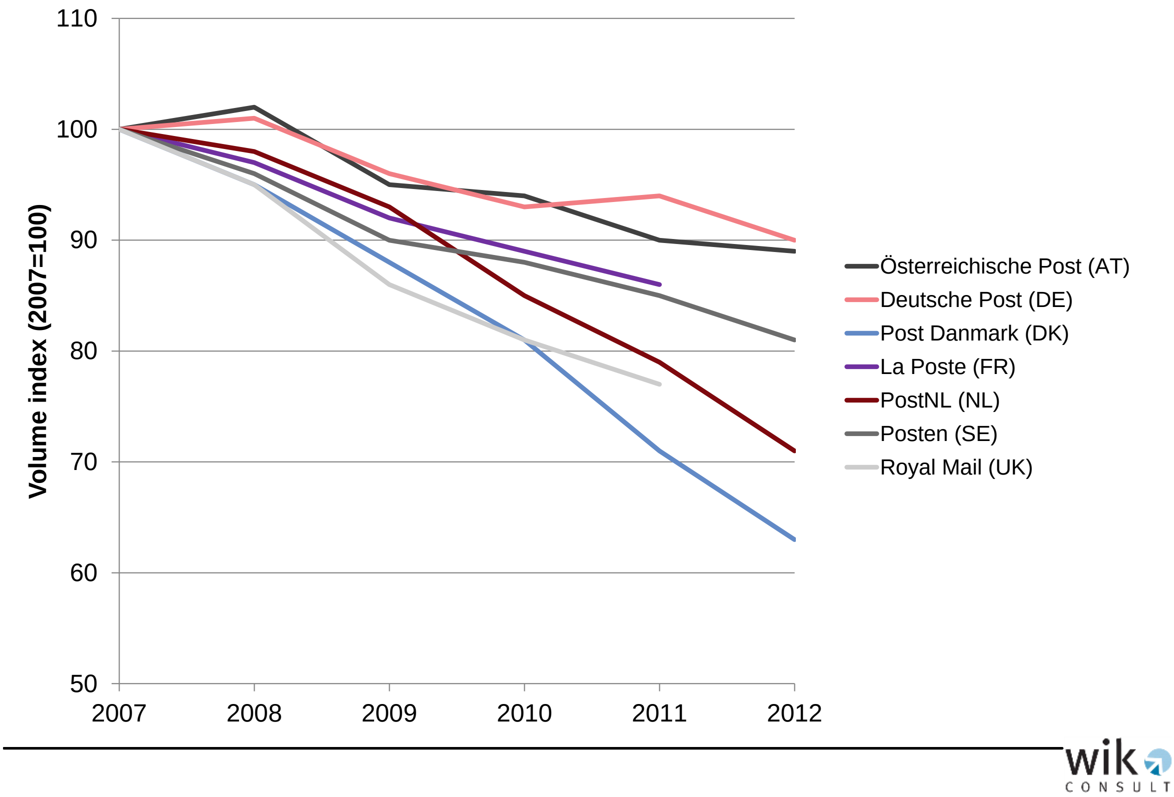
Note: Deutsche Post's, Poste Italiane's and Royal Mail's mail segments include the national and cross-border parcel business. Deutsche Post's and Austrian Post's mail segments include the mail business in foreign letter post markets. The results of DKUSP refer to PostNord's business division Mail Denmark and the results of SEUSP to PostNord's business division Mail Sweden.

In the past the mail business was the cash cow of most incumbent postal operators. Most of the Western USPs (plus Poste Italiane) report on financial results of their business segments.

- The EBIT margins are generally declining particularly from 2011 to 2012 but they are still above 5 percent in half of the cases including most of the Nordic postal operators. Austrian Post's mail segment even achieves an EBIT margin above 15 percent.
- Particularly, Post Danmark (Danish mail division of PostNord), PostNL and Poste Italiane report declining EBIT margins in postal operations; Post Danmark's and Poste Italiane's mail segments are even loss-making. This development reflects the accelerated decline in mail volume faced by Post Danmark (due to substitution) and PostNL (due to substitution and competition).
- Itella and Royal Mail have improved the profitability of their core business. Particularly Royal Mail achieved this improvement by a combination of

substantial price increases and efforts in modernizing and streamlining its postal operations.

Figure 3-27 Volume development index of selected USPs (2007-2012, 2007=100)




Source: WIK survey and WIK research

Declining letter post volume is the major reason for declining profitability. However, decline rates vary as shown in Figure 3-27 for selected Western USPs. Over a five year period (2007-2012) Post Danmark lost nearly 40 percent and PostNL nearly 30 percent of their volume (in total). This in mind the Danish USP (Post Danmark, the subsidiary of PostNord) and PostNL, the Dutch incumbent, are particularly challenged, moreover, as both companies have the reputation to be highly efficient postal operators.

Competing postal operators in domestic letter post markets are usually even more dependent on letter post business than the universal service providers. Moreover, growing in a shrinking market is much more difficult than in a growing market.

Competitors usually do not publish their financial results. However, experiences of Bring Citymail and many German competitors, the market exits of Adrexxo from the French letter post market and TNT Post from some Eastern and the Austrian letter post markets have shown that competitors are overall less profitable than the incumbents in the respective national letter post markets. PostNL reported for its international mail

activities in Germany, UK and Italy an underlying cash operating income of EUR 27 million or 1.7 percent of revenues (EUR 1.57 billion).[343] This margin is lower than the usual EBIT margin incumbent postal operators can achieve (of in average 5 percent).

#### 3.2.5.2 Safeguarding revenues in the domestic mail business

The major measures for safeguarding revenues are

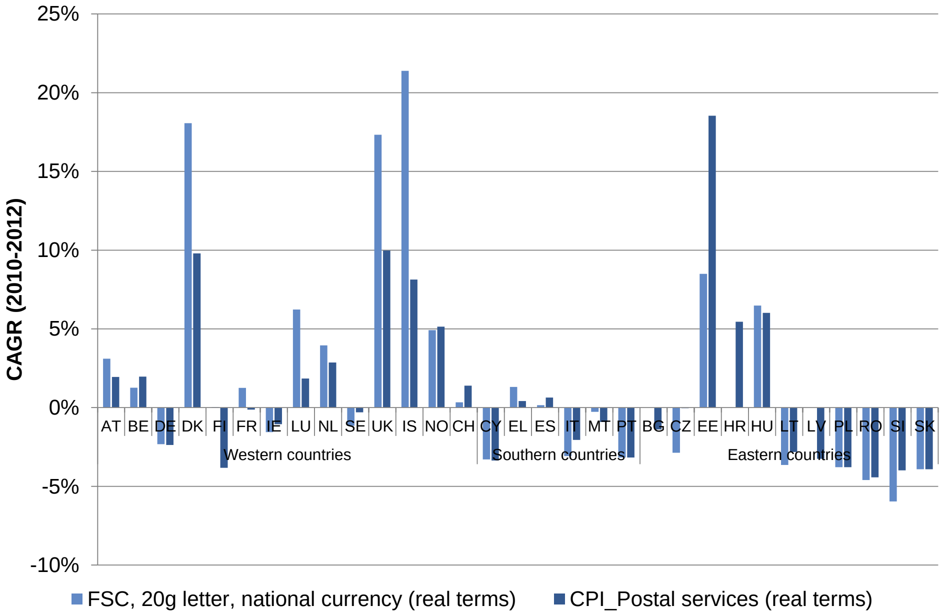
- Adapting price policy
- Creating new business in related areas
- Retain customers

*Adapting price policy*

Increasing tariffs is one opportunity to remain profitable. However, the success of this strategy depends on the reaction of postal customers, in economic terms on the price elasticity. The pre-condition for a success of this strategy is that postal customers do not switch either to competitors or to other communication channels due to increasing postal tariffs. As outlined in section 3.2.1.2 and also addressed in the CE study[344] it appears that the price elasticity of consumers is particularly low. For this reason it is less risky for postal operators to increase tariffs for single-piece items than for bulk mail products.

**343** PostNL (2013), Q4 & FY 2012 Results, Sustainable delivery, press presentation 25 February 2013, p. 2.
**344** Copenhagen Economics (2012), Pricing behaviour of postal operators, chapter 5.

Figure 3-28 Public tariffs and postal services in general (CAGR 2010-2012, real terms)




Source: WIK survey and WIK research (public tariffs), Eurostat (CPI and CPI_Postal services)

Note: No time-series data on public tariffs for the USPs in BG, LV and HR

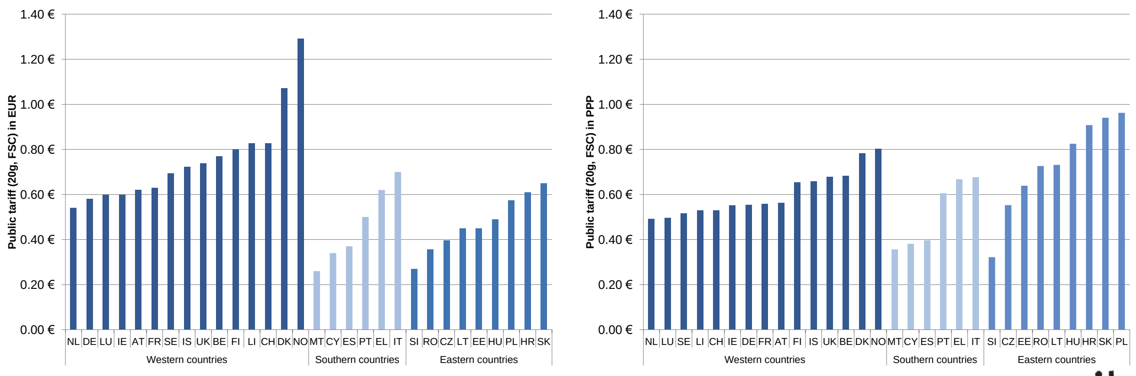
Figure 3-28 shows the development of the public tariffs for 20g letter of the fastest standard category (delivery at the next working day, D+1) and the general development of the prices for postal services between 2010 and 2012. Both indicators are corrected by inflation (based on the general consumer price index). In all Southern countries and in most Eastern countries public tariffs remained roughly stable or have even declined in real terms. Exceptions are Estonia and Hungary with average growth rates above 5 percent per year. In the Western countries the picture is again mixed. In some cases the tariffs are fairly stable (or even declined in real terms) for example in Germany, Finland, France, Ireland and Sweden. In other cases, notably in Denmark, Norway, Iceland and the UK public tariffs have substantially increased. Particularly, Royal Mail has substantially increased both single piece tariffs as well as access tariffs which was one important source of the improved financial situation of the company.[345]

In 2013 some USPs have substantially increased their basic tariffs. In most cases these are USPs with stable and declining tariffs (in real terms) in the past including Deutsche Post (plus 5.5 percent), La Poste (plus 5 percent), An Post (plus 9.1 percent), Poste Italiane (plus 16.7 percent), Maltapost (plus 30 percent), Polish Post (plus 20.5 percent) and CTT Correios (plus 6.4 percent). However, two USPs, Hungarian Post (plus 7.7 percent) and PostNL (plus 8 percent), had substantially increased their tariffs already

**345** Royal Mail, Annual Report 2011/12.

between 2010 and 2012. Additionally, PostNL recently announced that they will further increase the basic rate by additional 6 euro cents to 0.60 EUR this year.[346]

Figure 3-29 Domestic public tariffs in Euro and in Purchasing Power Parity (PPP), (20g FSC, May 2013)

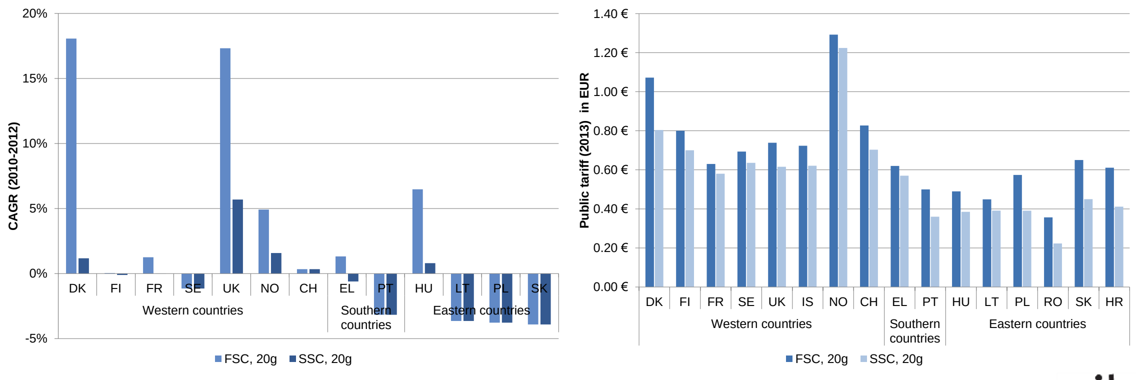



Source: WIK survey and WIK research (public tariffs), Eurostat (2011 PPP rates, 2012 or 2013 PPP rates not available)

Note: No data on public tariffs for the USPs in BG and LV.

The Norwegian and the Danish consumers pay the highest tariffs in Euro in Europe while in PPP consumers of the Eastern countries Croatia, Hungary, Slovak Republic and Poland have the highest prices for next day 20g letter. Overall, the tariffs are lowest in Slovenia followed by Malta and Cyprus (both, in Euro and PPP). In the group of the Western countries the Netherlands has the lowest standard rates (in Euro and PPP). However, this will change after the scheduled price increase in August 2013.

Figure 3-30 Developments in public tariffs for priority and non-priority letter services (FSC and SSC, 20 g, in real terms) and 2013 prices.




Source: WIK survey and WIK research (price lists of USPs)

346 PostNL (2013), New rates PostNL as of 1 August 2013, Press release 31 May 2013.

In thirteen Member States USPs offer basic letter post services that are delivered the second or the third day after posting (second fastest standard category: SSC). Particularly in Denmark, the UK, Norway and Hungary tariffs for second class letters have increased substantially less than for first class letters. Notably, in Denmark and the UK the second class letter is still subject to ex ante price regulation while the first class letter is not. The price difference between first and second class letters vary from 5 percent (Norway) to 37.5 percent (Romania). In most countries it is more than 10 percent.

*Price developments for bulk mail products*

The WIK survey has not covered developments of bulk mail tariffs but this study relies on the results of the study on the pricing behaviour of postal operators carried out by Copenhagen Economics on behalf of the European Commission in 2012. They conclude that prices for single piece mail have increased faster than inflation while prices for business mail products have increased with inflation during the period 2004 and 2011.[347] The price increases for bulk mail (including direct mail) were particularly low in 2008/2009 and slightly rose in 2010 and 2011.

More interestingly, and also highlighted by Copenhagen Economics, is the development that postal operators are seeking for price models to incentivise bulk mailers to accept delivery on specific week days. PostNL has launched the ‘Basic’ service for business customers in 2011 that allows for delivery in 48 or 72 hours depending on the day of collection. ‘Basic’ items are delivered on three days per week, on Tuesday, Thursday and Saturday, so that letter post volume is focused on these days.[348]

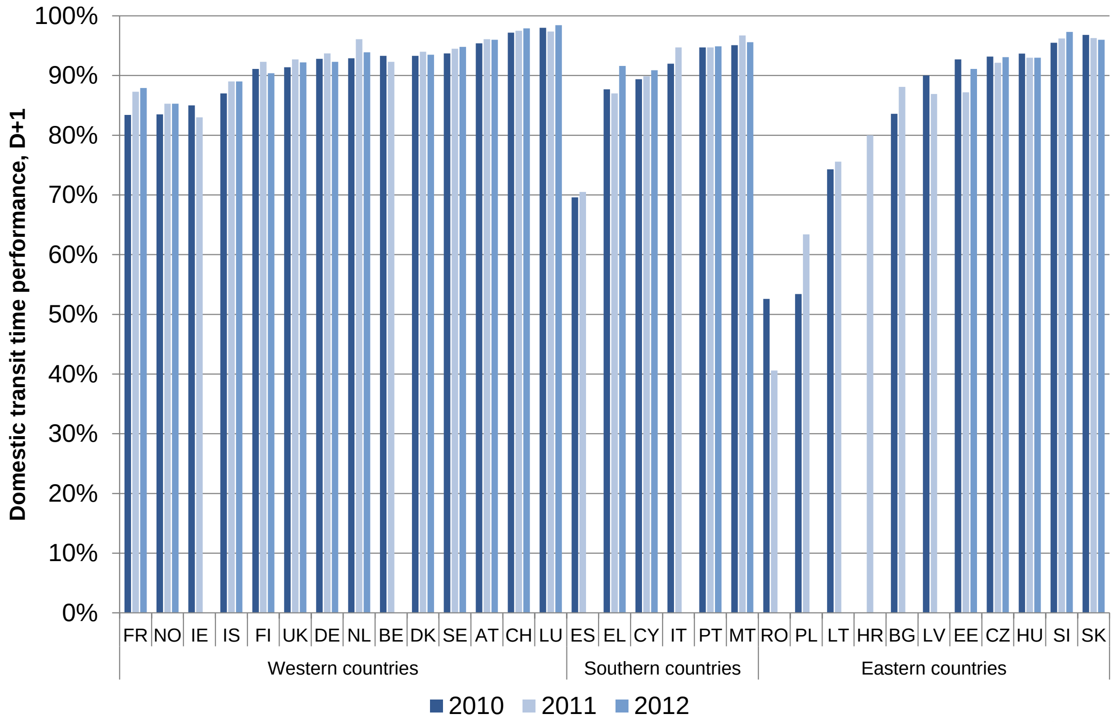
Generally, non-priority letter services allow for more flexibility in postal operations and are a way to reduce network cost. In the past the Austrian Post, for example, only offers next day delivery services for letters. This has changed in 2011 when the company launched an economy service for business customers. Business customers have to hand over at least 1,000 items at the next sorting centre that are delivered three days after posting. La Poste has introduced a D+2 letter (‘lettre verte’) for consumers and business customers additional to its D+1 service (‘lettre prioritaire’) and D+3/4 service (‘l’écopli’). Some years earlier, in 2007 Post Danmark introduced the C letter (additional to the D+1 A and the D+3 B letter), also exclusively for business customers, a letter delivered four days after consignment. However, particularly in countries with competition like in the Netherlands, this strategy increases the risk to lose customers to competition because the services of the incumbent postal operator and of the competitor become more and more interchangeable.

**347** Copenhagen Economics (2012), The pricing behaviour of postal operators, p. 14.
**348** WIK-Consult (2011), Developments in the Dutch postal market, p. 28.

*Providing reliable letter post services*

Another necessary factor to retain customers (and not to lose them to competitors or to other communication media) is to provide highly reliable postal service. In the past two decades incumbent postal operators made substantial progress in organizing their letter post operations in a way to achieve high values in the transit time performance of letters. Furthermore, well-organized operations are also necessary to offer day-certain delivery or other more customer-oriented services.

Figure 3-31 Domestic quality of service: Transit time performance (D+1)




Source: WIK survey and WIK research

The progress is reflected in the share of (first class or priority) letters delivered the next working day after posting (D+1). Figure 3-31 shows the recent developments of the D+1 performance for the last three years (2010-2012). In most Western and Southern countries levels above 90 percent are still the standard quality. Exceptions were France, Norway, Ireland and Iceland. It should be noted that particularly French La Poste achieved substantial improvements in quality of service in the last years thanks to its modernization program 'Cap Qualité Courrier'[349]. Spanish Correos, not offering a basic D+1 letter service, has also low rates for next day delivery. Additionally, many Eastern USPs made good progress even if their letter volume is substantially lower than of the

349 La Poste (2013), Annual Report 2012.

Western countries. Polish Post is still behind but the company made substantial progress between 2010 and 2011.

Reliable D+1 delivery of letters nationwide is still a unique feature of incumbent postal operators. This is particularly relevant in national letter postal markets with noticeable competition. Competing postal operators usually offer letter services with longer transit times. The Dutch competitor Sandd and the Swedish competitor Bring Citymail, both, deliver only on two days per week. Inpost, the main competitor of Polish Post, has transit times of more than two days although the company delivers five days per week.[350] German competitors, also delivering five days per week, usually need two days for nationwide delivery (due to logistical reasons). At local level they deliver the next working day.

The efforts for quality improvements are also visible in cross-border transit time performance of universal service providers.[351]

Table 3-7 Cross-border transit time performance

| | 2010 | | 2011 | | 2012 | |
|---|---|---|---|---|---|---|
| | UNEX-18 | UNEX-29 | UNEX-18 | UNEX-29 | UNEX-18 | UNEX-29 |
| **D+3, total** | 93.6% | 92.6% | 95.3% | 94.1% | 95.4% | 94.3% |
| **D+5, total** | 98.4% | 98.1% | 99.0% | 98.7% | 99.1% | 98.9% |
| **D+3, country-by-country** | 84.3% | 59.9% | 88.0% | 65.0% | 85.3% | 62.2% |
| **D+5 country-by country** | 71.9% | 57.6% | 88.0% | 71.0% | 89.5% | 70.0% |
| **# country flows** | 306 | 799 | 306 | 791 | 306 | 791 |

Source: IPC

Note: UNEX-18: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom
UNEX-29: UNEX-18 and Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

*Improve customer satisfaction*

Customer satisfaction is a central issue for USPs and NRAs throughout Europe. Methodologically, customer satisfaction level is measured through customer satisfaction surveys. However, the approaches taken are very heterogeneous.

With respect to USPs, some are very active in conducting customer satisfaction surveys whilst overall transparency in terms of the approach or method is rather scarce. One positive example is the USP of Denmark and Sweden (PostNord) who extensively describes the approach taken to measure customer satisfaction. This involves a

**350** Interview Inpost.
**351** International Post Corporation (2013), External Quality of Service Monitoring, Improving the Quality of International Mail, 2012 Results (IPC UNEX). IPC measures the cross-border transit time performance only of national postal operators resp. universal service providers.

monitoring tool (customer value index) that replaces previous customer surveys. The satisfaction level is measured twice a year.[352] Another positive example is the USP of Belgium (bpost), which will be highlighted in more detail below. Most of the other USPs only say that they or an external consultant carries out corresponding surveys but do not provide in-depth insights in terms of the approach. Rather, they disclose brief information on the scope of the survey such as the customer base, the surveyed service characteristics, the use of key performance indicators to measure customer satisfaction and the survey method in general. Basically, these are the USPs of Western Europe. Most of the USPs from Eastern Europe are not very active in carrying out customer satisfaction surveys with the exception of Slovenská pošta (USP of Slovakia).

With respect to NRAs, their activity in conducting customer satisfaction surveys is rather reserved. Only few of them carry out own customer satisfaction studies. These are the NRAs of the Netherlands, Malta, Sweden, Slovenia, the United Kingdom and Ireland. However, some NRAs describe their approach very extensively. In the Annual Report 2010, the Belgian NRA Belgische regulator voor de postdiensten en de telecommunicatie (BIPT) presents the results of the latest customer survey focusing on business clients (SME) and residential customers. The survey is carried out by the USP bpost and monitored by BIPT. The survey is based on 10 satisfaction indices determining the overall satisfaction level. These include sending and receiving letter post, sending and receiving parcels, receiving papers and periodicals, registered items, client information, the physical state of the post office, the service in the post office, the Postal Points, the E-Shop and the customer service.[353] Likewise, the Malta Communications Authority (MCA) is quite involved in surveys regarding the customer satisfaction with the postal services provided by MaltaPost. In 2012, the Authority carried out a survey for large bulk mailers and in 2011 for micro businesses and households. The two latter surveys revealed information regarding the perceptions of price levels, quality of service, access and complaints handling mechanisms both for business as well as residential customers.[354] The MCA is quite transparent and publishes detailed information regarding the methodology and the results in all three surveys.[355]

Over and above customer surveys as such, most of the USPs regularly measure and publish the customers' overall satisfaction level. However, data availability varies from year to year. Table 3-8 features the trends in customer satisfaction from 2010 to 2012 as published by USPs in their Annual Reports.

**352** PostNorden (2012), Annual Report (2011), p. 132.
**353** Belgian Institute for Postal Services and Telecommunications (2010), Annual report 2010, p. 30 f.
**354** Malta Communications Authority (2011a), Annual Report 2011, p. 59.
**355** Malta Communications Authority (2012), MCA Market Research Postal Services – Large Bulk Mailers Survey Results, March 2012; Malta Communications Authority (2011b), MCA Market Research Postal Services – Micro Businesses Survey Results, December 2011; Malta Communications Authority (2011c), MCA Market Research Postal Services – Household Survey Results, December 2011.

Table 3-8 Customer satisfaction indices by selected USPs

| USP of | USP's Satisfaction Index | | |
|---|---|---|---|
| | **2010** | **2011** | **2012** |
| **AT** | 94% | 94% | 94% |
| **BE** | 82% | 87% | |
| **DE** | 93% | 95% | 92% |
| **DK** | 70% | 70% | 71% |
| **ES** | | 83% | |
| **FI** | 77% | 2.81 | 3.11 |
| **FR** | | | 77% |
| **UK** | 89% | 85% | 87% |
| **LU** | | 97% | |
| **NL** | 91% | 89% | 84% |
| **PT** | 72.2% | 84.4% | |
| **SE** | 70% | 70% | 71% |
| **SK** | 71% | | |
| **NO** | 85% | | |
| **CH** | 75% | 79% | 79% |

Source: WIK research based on USPs' annual reports.

Note: Itella (FI) has changed the methodology how to report on customer satisfaction. Since 2011 they use a scale between 1 and 5 (Itella, Annual Report 2012, p. 21)

For some USPs, especially in Southern and Eastern Europe, data availability is scarce. For the USPs of Austria, Belgium, Denmark/Sweden, Portugal, and Switzerland stable or increasing trends can be reported. Especially Portugal reports significant increases. In contrast, trends fluctuate or decrease for the USPs of Germany, UK and the Netherlands. The Dutch USP PostNL faces a rather significant decrease from 2011 to 2012 by 5 percentage points. The USP explains this decline with a loss in quality due to implementation issues arising with the so-called Master Plan, an overhead restructuring program aiming at cost reductions due to efficiency measures, outsourcing and mergers.[356]

Indices published by NRAs representing the customer satisfaction level are rather scarce. As already addressed above, the NRAs of Belgium and Malta are quite active in this area. The BIPT published customer satisfaction indices (based on a bpost survey) from 2004 to 2010 for both business customers and residential customers. As Figure 3-32 indicates, the overall satisfaction level steadily increased.

**356** PostNL (2012), Annual Report 2012, p. 30.

Figure 3-32 Development in customer satisfaction for residential customers and business customers in Belgium

| | Private persons | | | | | | | Companies | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2004* | 2005* | 2006* | 2007 | 2008 | 2009 | 2010 | 2004* | 2005* | 2006* | 2007 | 2008 | 2009 | 2010 |
| **General satisfaction** | **74** | **75** | **76** | **75** | **82** | **81** | **83** | **75** | **79** | **81** | **82** | **82** | **84** | **81** |
| Sending - receiving letter post | 79 | 81 | 83 | 84 | 86 | 86 | 86 | 69 | 69 | 71 | 73 | 75 | 77 | 81 |
| Sending - receiving parcels | 94 | 94 | 96 | 94 | 92 | 94 | 92 | 81 | 83 | 86 | 88 | 88 | 89 | 90 |
| Receiving papers & periodicals | 94 | 95 | 96 | 94 | 89 | 93 | 92 | 79 | 78 | 77 | 81 | 87 | 88 | 88 |
| Registered items | 70 | 71 | 77 | 72 | 73 | 74 | 75 | 68 | 68 | 67 | 71 | 73 | 75 | 77 |
| Client information | 70 | 69 | 74 | 74 | 77 | 79 | 82 | 66 | 66 | 71 | 72 | 70 | 70 | 78 |
| Physical state of the post office | 70 | 71 | 74 | 74 | 75 | 75 | 77 | 66 | 66 | 67 | 74 | 72 | 72 | 76 |
| Service in post office | 77 | 76 | 81 | 79 | 79 | 79 | 84 | 68 | 65 | 71 | 72 | 73 | 74 | 78 |
| Postal Point | - | - | - | 90 | 86 | 87 | 89 | - | - | - | 90 | 87 | 84 | 83 |
| E-Shop | - | - | - | 100 | 93 | 85 | 88 | - | - | - | 88 | 93 | 95 | 90 |
| Customer service | - | - | - | 73 | 71 | 69 | 73 | - | - | - | 56 | 53 | 72 | 63 |

% satisfaction (score 5-7)
* Customer satisfaction measurement based on the new method (recalculation of the 2003 to 2006 figures according to the new method).
Source: results satisfaction survey La Poste 2010 and 2011 action plan

Source: BIPT (2011), Annual Report 2010, p.31

As revealed by MCA, 90 percent of households and 89 percent of SME are satisfied with the services/facilities provided at post offices. Among large bulk mailers, only 63 percent are satisfied. The surveys break quality of service satisfaction level further down, e.g. regarding satisfaction with courtesy and reliability of postmen, opening hours, delivery times and reliability, availability of post stamps/letterboxes and range and price of postal services.[357] The approaches taken by the NRAs in the United Kingdom and Ireland are featured in the case studies below.

Moreover, customer complaints are a central issue. According to the WIK survey, most of the USP publish complaint statistics. However, the USPs e.g. in Germany, the Netherlands and Poland do not pursue corresponding activities. Overall, transparency is rather heterogeneous. La Poste is one of the service providers that transparently publishes complaint statistics for the period 2007 to 2011.[358] Likewise, some NRAs

**357** Malta Communications Authority (2012), MCA Market Research Postal Services – Large Bulk Mailers Survey Results, March 2012; Malta Communications Authority (2011b), MCA Market Research Postal Services – Micro Businesses Survey Results, December 2011; Malta Communications Authority (2011c), MCA Market Research Postal Services – Household Survey Results, December 2011.
**358** La Poste (2011), Résultats de la qualité du service universel postal 2011, p. 12 et seq.

such as the MCA or the NRA of Portugal (Anacom) address this issue e.g. in terms of the reason for the complaint or a distribution of complaints related to type of service.[359]

Concluding on the approaches taken towards customers surveys, no clear trends can be identified. Availability of information is rather heterogeneous and in-depths insights are scarce. Among the USP, PostNord and bpost are encouraging examples. Among the NRA, customer satisfaction surveys are yet emerging. Active authorities are the NRAs of Belgium, the Netherlands, Malta, Sweden, Slovenia, the United Kingdom and Ireland. As regards the customer satisfaction level, overall stable or increasing trends can be reported. However, some USPs are confronted with a decline and should carefully investigate potential drivers and initiate or continue regular customer surveys.

Over and above customer satisfaction, there is an increasing focus on customer needs and discussions on potential enhancements of the universal service. However, only few USPs or NRAs are already sensitised regarding this issue.

Relevant examples among the USPs are Austrian Post and the Finnish USP Itella. Austrian Post detected by means of a customer survey that customers prefer letter invoices to electronic invoices. Therefore, Austrian post decided to pursue a two-fold strategy and offers both means of delivery.[360] Likewise, the Finnish USP Itella adapted its strategy pursuant to customer feedback. A customer survey concerning preferred and desired methods of dispatch and delivery speeds yielded that 80 percent of the interviewees consider it sufficient that deliveries reach recipients over two nights. As a consequence, Itella adapted the sending of so-called 2$^{nd}$ class letters, and accelerated their delivery by a workday. This is, recipients will henceforth receive letters over two nights, i.e. on the third working day on weekdays. Moreover, 2$^{nd}$ class letters can be henceforth posted in yellow boxes instead of posting them at the post office.[361]

The extensive research activities in terms of customer needs in the United Kingdom and Ireland are featured in the case studies below. Apart from that, other NRAs do not focus very much on changing customer needs.

**359** Malta Communications Authority (2012), MCA Market Research Postal Services – Large Bulk Mailers Survey Results, March 2012; Malta Communications Authority (2011b), MCA Market Research Postal Services – Micro Businesses Survey Results, December 2011; Malta Communications Authority (2011c), MCA Market Research Postal Services – Household Survey Results, December 2011, Anacom (2011), Challenges facing the postal sector as it moves to full liberalisation, p. 43 et seq.

**360** Post Austria (2011), Österreicher wollen Papier-Rechnungen, 21 June 2011.

**361** Itella (2011), new letter sending policy as of February 1, 31 March 2011.

Case study 3-11 Customer needs in the UK (Ofcom survey)

The British NRA Ofcom is one of the pioneers in dealing with customer needs. Recent studies and ensuing consultations constitute the NRA's sophisticated activities, which have been carried out in 2012. In detail, Ofcom commissioned a qualitative study and two quantitative study to better understand the users' use of and needs from postal services. The research was performed by two independent research agencies focusing on both residential users and businesses from across the UK. The research covers similar but not always identical issues and differs methodologically.

The qualitative study[362] focuses on usage patterns of and required needs from postal services, potential service improvements, a scenario-based inquiry as to whether there should be changes to the universal service and on social benefits. Moreover, a specific scenario refers to a single two-day service and queries as to whether 1st class and 2nd class would be replaced with a single tier two day service. Methodologically, the research is based on deliberative sessions asking open questions to the participants. The consulted customer groups consist of residential customers in urban, rural and deep rural locations and small, medium and large business customers.

The following results emerged from the survey: Regarding the usage patterns, an increasing trend towards a substitution of the postal service with electronic methods is reported from the majority of participants. However, there are differences between business customers and residential customer.

Focusing on the core needs from the postal service, overall expectations are high implying a tendency to overrate actual needs. Accordingly, many participants desire services that go beyond the basic universal service obligation, e.g. the collection of parcels at home. Analysing the survey result yields eight overarching user stated needs. They comprise the following:

- Simplicity and trustworthiness for all services
- Range of services allowing customers to trade off speed, affordability and control (such as mail tracking, reliability and security)
- Postal services fitting with demands of modern life (younger residential and business customers)
- Predictability of delivery time and a regular morning delivery (large businesses)

Bearing these outcomes in mind, the survey further analyses to what extent stated needs coincide with the actual usage patterns. Most essential elements of the universal service obligation are 1st/2nd class stamp, six delivery/collection days, maintaining delivery and collection times, special delivery, recorded delivery an international service and redirection. However, some services bear the potential of over delivery and are rather 'nice to have'. For example, residential customers claim 1st class service whilst their core need rather relate to a quick and affordable service that arrives within a reasonable time frame. Discussions generated that 'a 'universal'-two day stamp - would meet the need of most people's postal requirements.'

To complete the survey, participants were confronted with possible future scenarios proposing adjustments to the current universal service provision. The following scenarios were perceived positively and the core postal needs would be met:

- replacing 1st and 2nd class post with a single two day service,
- reducing collection and delivery days from six to five, although small and medium business voiced concerns with costs and delays,
- simultaneous collection and delivery from/to post boxes,

362 Ipsos MORI/Ofcom (2012), Postal User Needs Qualitative Research MC: MCMR/003, August 2012.

- post being delivered up until 5 pm (one to two hours later than current service).

One scenario, however, was not accepted: a change in 1st class mail implying local mail to be delivered the next day and national mail taking two days.[363]

Moreover, Ofcom commissioned a quantitative study[364] including two large scale surveys (residential and business customers respectively). Whilst parts of the research focuses on the same aspects as the qualitative study (usage patterns, improvements and service changes, discussion about social benefits) a conjoint analysis seeks to identify the customers' tolerability of changes to the universal services in more detail.

The main results were the following. As regards potential changes to the postal service, the option preferred by residential customers is a single tier postal service, which is slightly more expensive than current 2nd class but quicker. This would replace the current two tier service consisting of 1st and 2nd class services. In contrast, business customers appreciate the two-tier service offering the option to trade-off price and speed. Both customer groups think a guaranteed next day service is important. Also, both agree that improvements in postal service should focus on cheaper prices and earlier deliveries.

Choosing between different product options, the conjoint exercise revealed that the price of 1st class mail is the main driver of choice for both customer categories. The second driver is the number of delivery days. 90% of all customers find the current services tolerable although the tolerability of changes is quite high ranging around 82% (business customers) and nearly 87% (residential customers). Customers would accept significant changes in the service in order to maintain prices. Monetising the results from the conjoint analysis indicates that both residential customers are most sensitive towards having collection and delivery six days a week whereas services on Saturdays were considers less important among business customers.[365]

Synthesising the findings, both studies show that customers feel their core needs being met. However, tolerability towards changes to the universal service is quite high. The most sensitive issues are delivery times and prices. Whilst six deliveries days are considered important by residential customers, business customers would accept five days delivery excluding Saturdays. In terms of 1st/2nd class services, several customers would accept service adjustments, e.g. replacing 1st and 2nd class post with a single two day service or a single tier postal service, which is slightly more expensive than current 2nd class but quicker. Still, more than half of the participants claim 1st class services being continued including next day delivery. Overall, customers would prefer service quality reduction to price rises.[366]

Subsequent to the research, Ofcom initiated consultation seeking evidence from stakeholders. The majority supports the status quo. Pursuant to this step, Ofcom published a statement in March 2013 concluding that the postal market is currently meeting customer needs.[367] Thus, Ofcom decided not to change the scope of the universal service. However, Ofcom is sensitised towards evolving customer preferences and will monitor the development of future customer needs.[368]

**363** Ipsos MORI/Ofcom (2012), Postal User Needs Qualitative Research MC: MCMR/003, August 2012.

**364** TNS-BMRB/Ofcom (2012), Universal Service Obligation Postal Use Needs 2012, Quantitative research report.

**365** TNS-BMRB/Ofcom (2012), Universal Service Obligation Postal Use Needs 2012, Quantitative research report.

**366** Ipsos MORI/Ofcom (2012), Postal User Needs Qualitative Research MC: MCMR/003, August 2012. TNS-BMRB/Ofcom (2012), Universal Service Obligation Postal Use Needs 2012, Quantitative research report, Ofcom (2012), Review of postal users‘ need An assessment of the reasonable needs of uyers in relation to the market for the provision of services in the united Kingom, Statement, 27 March 2013.

**367** Ofcom (2012), Review of postal users‘ need An assessment of the reasonable needs of uyers in relation to the market for the provision of services in the United Kingom, Statement, 27 March 2013.

**368** Ibid.

Case study 3-12 Customer needs in Ireland (ComReg survey)

The Irish NRA ComReg commissioned a research project focusing on the experience of and needs from postal services.[369] The surveyed customer groups are residential customers, businesses, non-governmental organisations (NGO) and governments bodies. The project scope comprises both the universal postal service provided by the USP AnPost as well as postal services in a broader sense. The research project is of qualitative nature.

Overall, the study observes a diminishing importance of letter post and the use of electronic substitutes among residential customers and SME. In contrast, large businesses, governmental bodies and NGOs still rely on letter post. In particular, they consider direct mail and unaddressed mail as important. Whilst residential and organisational customers are satisfied and feel postal services meet their needs, SME do not rate AnPosts parcel services as customer friendly. This dissatisfaction is mainly due to a lack of awareness of postal services and the decreasing use of postal services in general.

As regards the universal service provision, both residential and organisational customers emphasise the importance of delivery to every address and the reliability of the service (i.e. at the same time of the day). In contrast, customers are rather dissatisfied with service quality in terms of parcels. The survey yields that some features of the universal service obligation particularly addresses the needs of larger commercial organisations and government bodies with distinct communication needs as well as NGOs. Residential customers and SMEs have lower requirements than specified in the universal service.

Overall the research discloses that postal services have to adapt to changing customer needs both in terms of operations and pricing. This would include the transition to electronic communication, better access to postal services (e.g. availability of stamps or improvement of payment processing) and improving of parcel services as non-substitutable area. Here, the focus should be on innovative business models in terms of pricing, e.g. in the form of fixed or banded pricing models.

Comparing the two feature countries, the Irish customers seem to see much more room for improvement to postal services than their British counterparts. Especially decreasing usage patterns should make Irish An Post alert and initiate enhancements to retain customers and continue satisfying their changing needs. This should happen in a price sensitive manner. In both countries, the universal service in particular does not require any changes.

A pivotal issue is changing customer needs. Whilst e.g. the USPs in Finland and Austria already responded to changing customer needs by adjusting their services, some NRAs address this issue more academically. The case studies of Ofcom and ComReg feature positive examples among NRA who aim at gaining in-depth insights in changing customer needs. The research confirms that customers are quite mature in terms of expressing what they require from postal services in general and the universal service provision in particular. These positive examples should sensitise policy makers and associations such as the activities on EPRG-level to encourage the European NRAs to follow the British and Irish examples and investigate changing customer needs. In a

**369** The Research Perspective/ComReg (2010), Findings from qualitative research into the national need for communication and distribution services, prepared by The Research Perspective Ltd on behalf of The Commission for Communications Regulation.

second step, conclusions should be drawn to potential amendments to the universal service.

*Creating new business in electronic delivery services: Electronic mail box services*

Electronic substitution is seen as major challenge for the core business of postal operators. This trend is promoted by e-government activities that often include the necessity for secure electronic communication. Some incumbent postal operators try to step into this business.

Table 3-9 Electronic mail box solutions

| USP in | Service | USP | Target group | Number of users |
|---|---|---|---|---|
| **AT** | Meinbrief.at | Österreichische Post | Any2Any | not published |
| **BE** | certipost | bpost[370] | B2B | not published |
| **CH** | Inca Mail | Schweizerische Post | B2B | not published |
| **DE** | E-Postbrief | Deutsche Post | Any2Any | end of 2010: 1m registered users, number of messages not published |
| **DK** | e-boks | Post Danmark, Nets | B2X, Gov2X | 2012: 3.8m receivers and 20,000 senders; 205m letters sent |
| **EE** | eArvekeskus | Eesti Post | B2X, Gov2X | 2012: ~1.200 corporate customers and local governments |
| **ES** | Direccion Electronica Habilitada | Ministerio de Hacienda y Administraciones Públicas | Gov2B | not published |
| **FI** | Net Posti | Itella | B2X, Gov2X | 2013: 10,000 senders and 450,000 receivers; nearly 13m messages sent (2012) |
| **FR** | Digiposte | La Poste | B2X, Gov2X | not published |
| **IT** | Postemailbox | Poste Italiane | Any2Any | not published |
| **NL** | de digitale brievenbus | PostNL | B2C, Gov2C | Not published |
| **NO** | e-boks | Post Danmark, Nets | B2X | Not published |
| **NO** | Digipost | Norway Post | Any2Any | Launched 2011, 2012: 240,000 registered users, 1m messages sent |
| **PT** | ViaCTT | Correios | Any2Any | Not published |
| **SE** | ePostboxen | Posten | B2X, Gov2X | Not published |

Source: WIK-Consult, information based on homepages and annual reports of USPs

Table 3-9 shows that the majority of these solutions focusses on business users – either on exchange of invoices between companies (as for example in Belgium), or on invoices and other transaction mail from companies and public institutions to private and business users (all Nordic mail box services). Neither information on real usage are available with the exception of the Nordic countries where these services have become quite widely spread nor information on the financial contribution of these services are available. A presumable reason might be a disappointing development of user figures.

**370** Bpost has sold the network and the e-invoicing business to Basware, a Finnish e-invoicing company in October 2012. The Certipost document exchange organisation will be integrated within the Basware global organisation. (see bpost (2012), bpost vend une partie des activités de Certipost, press release 8 October 2012).

This is highlighted by a statement of bpost that has recently sold its subsidiary Certipost. The CEO of bpost said with reference to electronic services 'We do not see the business case, we do not see any willingness of senders or recipients to pay. As long as that is the case, we will not move into the e-box.'[371].

Extension of business in growing areas, particularly parcel operations is another opportunity. This is outlined in section 3.3 of this report.

#### 3.2.5.3 Saving costs in domestic mail operations

Adapting pricing policy, more customer orientation and providing high-quality services are necessary to safeguard revenues. Simultaneously, postal operators seek to improve efficiency and to reduce cost to safeguard financial viability in postal operations. During the last two decades universal service providers have substantially invested in their operations with the objective to become more efficient, to improve quality of service and, more recently, to increase cost flexibility.[372]

- Since 2009, Deutsche Post has invested EUR 400 million for the modernization of its sorting operations. The aim of the modernization is to cut costs due to growing competition and a projected letter volume decline. A total of 385 new sorting machines were installed until 2012. The old sorting machines for small and compact letters were replaced by 288 new ones. Additionally, 87 new sorting machines for large letters were installed. The aim of this efficiency project was to increase the level of automated sorting and to reduce the number of sorting steps (particularly for small letters).[373] Moreover, the new generation of flat sorters is able to sort large letters by delivery sequence.

- The aim of La Poste's mail quality project launched in 2004 was to modernise the mail processes, and to improve quality of service. La Poste has earmarked € 3.4 billion for the entire duration of the project. At the end of 2009, the modernization program covered 70 percent of French mail operations: 18 automated mail handling platforms were opened in 2009, 6 of them newly-built and 12 transformed existing locations.[374] End of 2011, 41 new generation platforms were implemented covering 90 percent of French operations.[375] The delivery quality (D+1) increased from 66 percent before 2004 to more than 87

---

**371** CEP-Research (2012), Bpost expands core services but rejects diversification, press notice 20 September 2012.
**372** ITA-Consulting / WIK-Consult (2009), The Evolution of the European Postal Market since 1997, p. 85-87.
**373** Deutsche Post (2009): Deutsche Post investiert 420 Millionen ins Briefgeschäft, Press release of 23. March 2009 and Deutsche Post (2012): Deutsche Post: 400 Millionen ins Briefnetz investiert, Press release of 26 July 2012.
**374** La Poste (2010), Base Prospectus, p. 75.
**375** Le Groupe La Poste (2012), Debt Investor Presentation, November 2012, slide 41.

percent in 2011 while company employment declined by one fifth (in full time equivalents).[376]

- TNT Post announced 'Master plan III' in 2008 that should contribute EUR 200 million saving in costs.[377] The plan includes substantial restructuring of sorting and delivery processes in the six letter sorting centres. PostNL's original objective was to centralize mail preparation to the six sorting centres. Additionally, PostNL is replacing step-by-step full-time postmen by lower paid part-time deliverer workers. These part-time deliverers are only responsible for final delivery so that the share of their in-office activities will be negligible. However, due to substantial quality problems PostNL recently decided to slow down the centralization process and to still rely on a stepwise reducing number of delivery offices for mail preparation instead of centralized mail preparation centres at the six sorting facilities.[378] It appears that the risk to lose customers (and thus revenues) outweighed the targeted cost savings.

- Since 2010, postal operations of Swedish Posten are under construction. The aim of the current efficiency program is to secure profitable mail operations by the establishment of a new terminal structure for postal operations (which will increase production flexibility), the reduction of the cost base and an increase of the share of variable costs by adjusting workforce. It is planned to invest in new sorting machines for letters and flats and to install multi-sorters for handling small packets (bulky letter post items up to 2 kg) in each of the remaining sorting centres. The number of sorting centres shall be reduced from 12 to 7 up to 2016 (two new ones and four existing, but modernized ones).

- Another major source for cost savings is to shift from own driven post offices to shop-in-shop solutions and postal agencies. PostNL and Deutsche Post, both reported, that they have fully transformed their branch networks in this way which substantially reduces the costs of mail acceptance.

Technology suppliers also have reacted on this trend of declining mail volume. They developed new sorting machines that are able to sort both, letters and flats, in one machine.[379] Modern flat sorters can be used for delivery sequence sorting.[380] The same letter sorting machine can now be used for cancelling and sorting (even up to

**376** La Poste Group, Annual Reports 2010-2012 (registration documents).
**377** TNT Post (2008), Update TNT Post's strategy: next steps in redefining its (mail) markets, Analysts' Meeting, presentation of Harry Koostra 4 December 2008, slide 12.
**378** PostNL (2013), Q4 & FY 2012 Results, Update 2015, Sustainable delivery, presentation of Herna Verhagen 25 February 2013, slides 14-16.
**379** E.g. Solystic, XMS Sorting mixed mail (see www.solystic.com/en/Mixed-mail-137.html)
**380** E.g. Siemens, Open Mail Handling System OMS (see http://www.mobility.siemens.com/mobility/global/en/logistics/postal-automation/sorting-machines/flats-sorting/Pages/flats-sorting.aspx)

delivery sequence).[381] These developments help to reduce, first, the number of sorting steps in the mail centres, and, second, the footprint i.e. the necessary space (and labour) for each machine. Another advantage is that they can be more flexibly used particularly when letter post volume is low.

Labour cost presents a substantial share of total cost of postal operations. For this reason postal operators tries to reduce labour cost by adapting labour conditions particularly the wages and to reduce labour due to improved efficiency in sorting and delivery operations. This aspect will be considered in more detail in section 3.4 of this report.

## 3.3 Parcel and express markets

### 3.3.1 Demand for parcel and express services

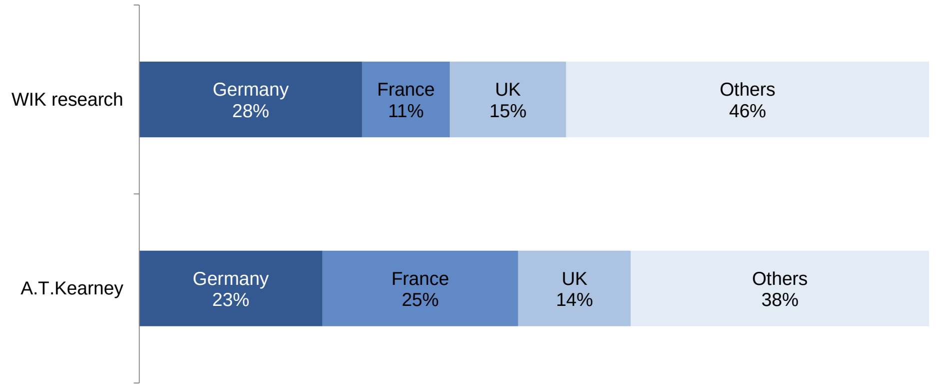
#### 3.3.1.1 Developments in demand for parcel and express services

In the sector overview (see section 3.1) we refer to A.T. Kearney figures (EUR 47 billion)[382] when presenting the size of the postal sector to ensure comparability with former studies. Based on our survey and supplementary research we estimate a market size of EUR 37 billion for 2011 which is substantially lower than the one of A.T. Kearney. Additional to limited returns regarding parcel & express market data in the WIK survey differences in the methodology and the sector definition explain this discrepancy. A.T. Kearney refers to shipments weighing up to 2,500 kilogram. Therefore, the estimation also contains services that are more related to freight and logistics services and results in a higher value for the market size compared to the more narrowly defined parcel & express services as part of the postal market. This is particularly obvious in the French example: A.T. Kearney's estimation is more than twice the estimated market size published by the French postal regulator ARCEP for the same year.

**381** E.g. Siemens, Culler Facer Canceller CFC 3004
(see http://www.mobility.siemens.com/mobility/global/SiteCollectionDocuments/en/logistics/postal-automation/sorting-machines/ePaper-CFC-3004/index.html) and NEC, CFCR NS-10
(see http://uk.nec.com/en_GB/global/solutions/postal/content/presort.html#NS10)

**382** See A.T.Kearney (2011), Europe's CEP market: Growth on new terms.

Figure 3-33 Structure of the European parcel and express market by country (2011)




Sources: Based on A.T.Kearney (2012), Europe's CEP Market: Growth on New Terms; WIK survey and research.

The revenue structure by country and even the ranking of the three largest parcel & express markets also differ between A.T. Kearney's and WIK's estimations. (see Figure 3-33). At least, the three biggest markets account for more than half of the European parcel & express sector in both surveys.

Other sources come to different estimations of the market size as well. For example, TNT Express estimates that the European parcel and express market has a size of EUR 60 billion in 2010.[383] In contrast, according to La Poste the intra-European parcel and express market generated EUR 37 billion in 2011.[384] DHL Deutsche Post, on the other hand, estimates a market size of EUR 6.8 billion which refers to the European express market in 2011.[385] The European Express Association, in turn, estimated a size of EUR 38 billion for the European express market in 2010.[386]

Overall, there is no consensus about the size of the European parcel and express market due to different market definitions, especially regarding the weight limit of shipments and the service characteristics. Another outcome of our survey is that many regulatory authorities have not provided any market information because, most probably, they do not systematically collect data on domestic and cross-border parcel & express services. To get more reliable data on these markets that are also comparable over time it is necessary to develop a consistent methodology and define clear responsibilities for data collection.

**383** See TNT Express (2012), 4Q11 Analysts presentation: 2011 Highlights and Strategy update, 21. February 2012.
**384** See Le Groupe La Poste (2012), Registration document 2012, p. 34.
**385** See DHL Deutsche Post (2012), Annual report 2012, p. 59. The segment refers to TDI, i.e. time definite international services.
**386** See European Express Association (2011), Economic impact of Express Carriers in Europe, p. 6.

Table 3-10 Parcel volume per country group

| | Population distribution (2011) | Distribution of parcel volume (2011) | Parcels per capita (2011) |
|---|---|---|---|
| **Western countries** | 55% | 86% | 20 |
| **Southern countries** | 25% | 11% | 5 |
| **Eastern countries** | 21% | 3% | 2 |
| **Total** | **520m** | **~6.7bn** | **14** |
| **EU-28** | **507m** | **~6.5bn** | **13** |

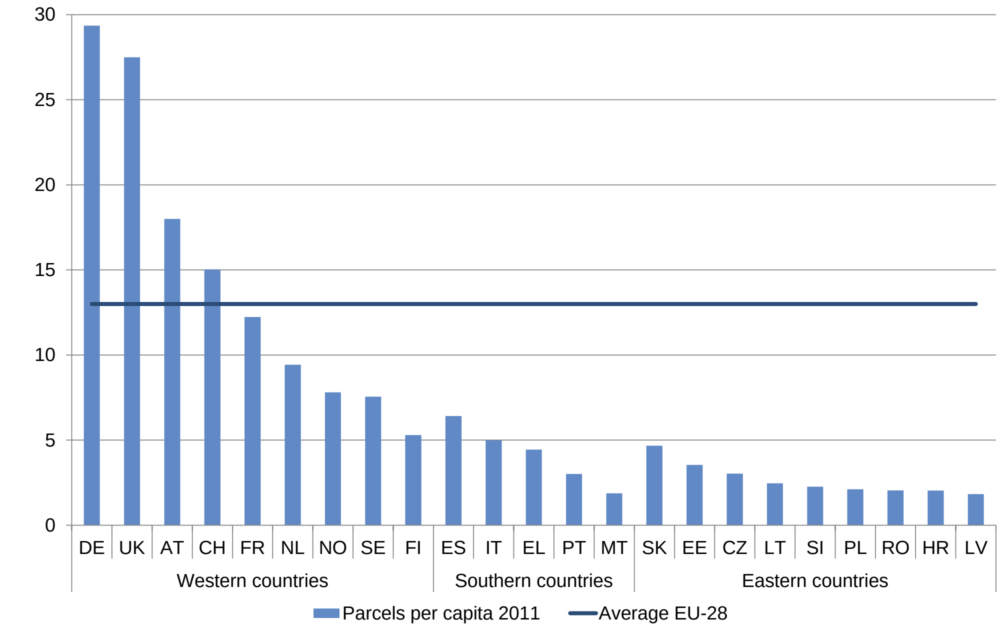
Sources: WIK survey and WIK research.

Notes: Western countries: AT, BE, DE, DK, FR, FI, IE, LU, NL, SE, UK, IS, LI, NO, CH
Southern countries: CY, EL, ES, IT, MT, PT
Eastern countries: BG, CZ, EE, HU, LT, LV, PL, RO, SI, SK, HR; 2012 figures for MT and PT.

The heterogeneity of the national parcel & express markets in Europe is also reflected in the distribution of parcel volumes between the three country groups. Figure 3-34 illustrates the parcel volume per capita in Europe and the average in the EU-28 countries. The data indicates differences in the stages of development between the countries. The Western countries account for 86 percent of the European parcel volume. While in these countries 20 parcels are allotted to each inhabitant the Southern countries only achieve one quarter and the Eastern countries even 10 percent of this value. For this reason the Eastern and Southern countries have still substantial growth potentials which is also reflected in high growth rates in e-commerce of about 33 percent.[387] Hence, the Eastern and Southern countries may catch up at least to some extent (given the difficult economic conditions in these countries) in the future. Figure 3-34 also highlights the heterogeneity of the countries regarding the use of parcel & express services.

**387** See CEP Research (2013), Parcel operators reap the rewards of 19% European e-retail growth, 28. Mai 2013.

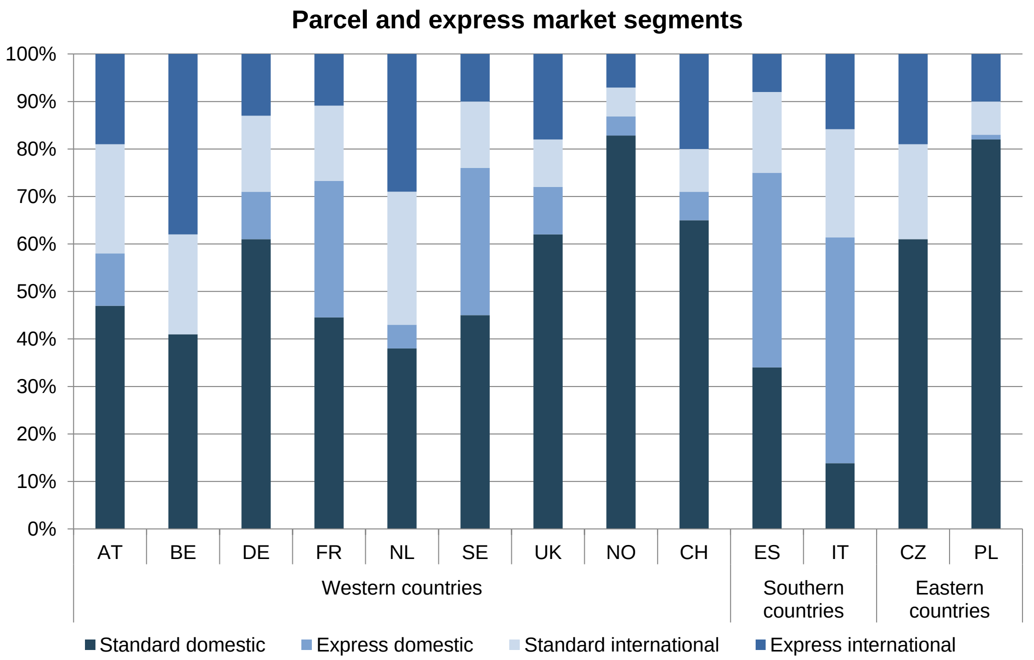
Figure 3-34 Parcels per capita (2011)




Source: WIK survey and WIK research.

Note: 2010 figure for NL, 2012 figures for AT, PT and RO.

Figure 3-35 Parcel and express market segments (2011)




Source: Based on A.T.Kearney (2012), Internationales Segment wächst starker als Inlandsmarkt [International segment outperforms domestic markets]

Figure 3-35 illustrates the heterogeneous structure of national parcel and express markets within Europe. Overall, express services only account for one quarter in domestic but more than half in cross-border market segments. In small countries cross-border parcel & express services are basically more important than in large countries (e.g. in the Netherlands and Belgium compared to Germany and U.K.).

It appears that in countries with relatively 'slow' standard parcel services (i.e. delivery times of two or more working days), e.g. in Spain, Italy and France, domestic express services are more important than in countries with high-quality standard services (i.e. next day delivery of standard parcels) e.g. Germany and Austria.

In 2009 parcel and particularly express volumes and revenues dropped due to the financial crisis and the following economic recession. In the following volumes and revenues (volumes more than revenues) caught up the drop.

This European (but also global) trend was also reflected by the business developments of international parcel & express service providers UPS, FedEx, DHL, TNT Express as well as GLS and La Poste's parcel and express division. Their revenues substantially dropped in 2009. Until 2011 all operators have at least achieved or even outperformed their 2008 revenue level except for DHL that sold substantial parts of their domestic services in the UK and France in the meantime.[388]

Based on A.T. Kearney's CEP market survey[389] the European CEP revenues declined by minus 9 percent between 2008 and 2009. The cross-border shipments were more affected than the domestic shipments. In contrast, volume declined only by minus 2 percent which highlights a combination of price pressure on all services, a shift from express services to lower priced parcel services, and more generally a decline in the average weight per shipment. This and the relatively low decline in volume already shows the impact of the growing B2C segment.

Between 2009 and 2011 the European CEP market dynamically grew by 4 percent in revenues and 6 percent in volume. International shipments outperformed domestic parcel & express business according to the survey.[390] Germany, France and the UK dominate the European parcel & express market. These are more mature markets in terms of parcel & express services and have generally lower growth rates than emerging markets in the Eastern countries (e.g. Poland).[391]

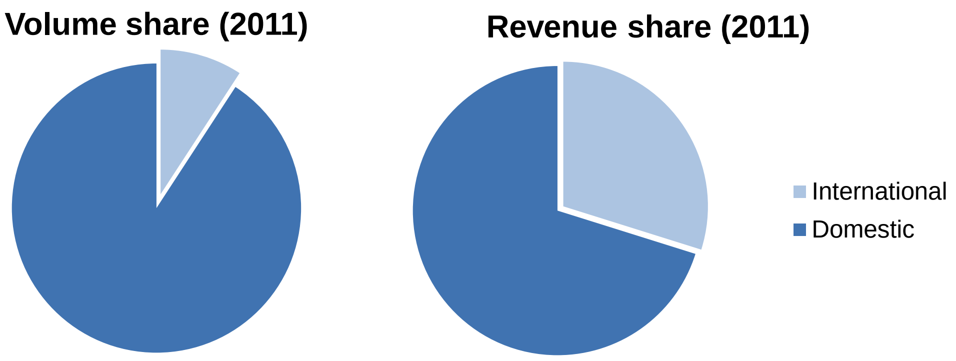
Geopost, the parcel & express subsidiary of French La Poste and responsible for the European parcel & express network under the DPD branding, estimates that in 2011 the

**388** Based on annual reports of UPS, FedEx, Deutsche Post DHL, Royal Mail Group and La Poste.
**389** See A.T. Kearney (2011), Courier, Express and Parcel: Can It Keep the Momentum?, p. 2.
**390** See A.T. Kearney (2012), Internationales Segment wächst stärker als Inlandsmarkt [International segment outperforms domestic markets], p. 2.
**391** See A.T. Kearney (2012), Internationales Segment wächst stärker als Inlandsmarkt [International segment outperforms domestic markets], p. 3.

B2B segment still accounted for 70 percent of revenues in Europe. They further estimated that the B2B segment grew in average 2-3 percent per year between 2000 and 2012 while the B2C segment increased by 4-6 percent during the same period.[392]

Generally, the importance of B2C shipments particularly in parcel markets is increasing. The German association of international express and courier companies (BIEK) estimates that the share of B2C segment increased from 45 percent to 50 percent in the German parcel market (i.e. excluding express services).[393] We consider this trend as representative for many European countries.

Figure 3-36 Domestic vs. cross border parcel & express services (2011)




Source: Based on A.T.Kearney (2012), Europe's CEP Market: Growth on New Terms.

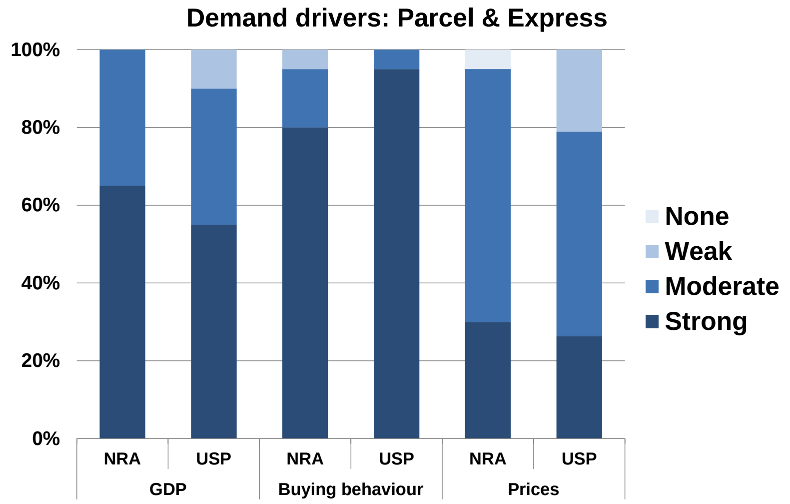
According to A.T. Kearney's estimations domestic parcel services account for approximately 70 percent of total revenues and approximately 90 percent of volume in the European parcel & express market (see Figure 3-36). Due to the higher volume growth rate of approximately 9 percent between 2009 and 2011 in the cross-border segment compared to 6 percent in the domestic segment, they expect the share of cross-border volumes to increase further.[394]

Cross-border parcel & express services are still dominated by B2B shipments. A.T. Kearney estimated that B2C accounted for more than 40 percent of domestic volumes and only 10 percent of cross-border volumes in 2010. However, for cross-border B2C shipments they expected an average growth rate of 12 per cent.[395] Overall, this relatively low share of cross-border B2C volume reflects the comparatively lower importance of cross-border distance selling compared to its role in national markets.

**392** See CEP Research (2013), GeoPost plans European B2C parcel delivery points network, 5 April 2013.
**393** See BIEK (2013), KEP-Studie 2013 [CEP study 2013], p. 15.
**394** A.T. Kearney (2012), Europe's CEP Market: Growth on New Terms; CEP Research (2013).
**395** See A.T. Kearney (2011), Courier, Express and Parcel: Can It Keep the Momentum, p. 5.

#### 3.3.1.2 Key drivers for demand developments

Figure 3-37 Importance of demand drivers for domestic parcel & express services




Source: WIK survey.

Note: 20 NRA and 20 USP responses for GDP and buying behaviour as drivers, 20 NRA and 19 USP responses for prices.

In the view of the respondents the demand for parcel & express services is mostly affected by the changing buying behaviour, i.e. the general trend to order goods (and services) online that have to be delivered by postal and parcel carriers. However, the development of the economy is also relevant but past developments have shown that this is more the case for B2B than for B2C transactions (i.e. distance selling and e-commerce). After the drop in revenues and volumes due to the economic downturn in 2008 and 2009 the B2B segment is now stabilising and faces a moderate growth.[396] Generally, B2B services and particularly express services (time definite services with guaranteed delivery times) are highly correlated to the general economic development and developments in trade flows.[397]

Moreover, there is a general trend to use deferred, i.e. lower priced parcel services instead of relatively expensive express services for domestic but also for cross-border shipments as outlined in the last section. This indicates that the customers are still price-sensitive although the survey respondents estimate that the impact of prices on overall demand is comparatively lower than of the other two influence factors (economy and changing buying behaviour). In the following the most important demand driver 'e-commerce' is considered in more detail.

**396** See Oxford Economics (2011), The Economic Impact of Express Carriers in Europe, November 2011.
**397** See TNT Express, Annual Report 2012, p. 17.

E-commerce transactions in goods and services (short e-commerce) are defined as purchases and sales orders made via websites or systems of electronic data interchange, excluding manually typed e-mails.[398] Basically, e-commerce includes online sales between consumers (C2C e-commerce, e.g. via eBay), between companies (B2B e-commerce) and between companies and consumers (B2C e-commerce). The focus in this report is on the B2C segment. According to the European Commission, the main sectors transformed by e-commerce in the B2C segment include travel agencies, clothing, sales of electronic and cultural goods, financial services, gambling and sports betting. Moreover, the market for online music ('digital content') is growing fast.[399]

Historically, B2C parcel delivery services were mainly demanded by mail order or distance selling companies. Orders were made by phone or mail based on information provided in TV and in catalogues. In countries with well-developed distance selling businesses, domestic B2C delivery services have been successfully established (e.g. in France, the UK, the Netherlands, the Scandinavian countries or in Germany). With emerging internet services and broadband access the sales channels of distance selling have diversified to the internet to allow for online orders.

Globally, Europe is the world's largest e-commerce market, ahead of the United States, with an expected turnover of EUR 270-280 billion in 2012, and followed by Asia-Pacific, with an expected turnover of EUR 215-216 billion in 2012.[400] As a matter of fact, the e-commerce sector is constantly growing throughout Europe. The European association Ecommerce Europe estimates an e-commerce turnover of products and services of EUR 312 billion in 2012, 19 percent more than in 2011. The association estimates that (EU-28) EUR 277 billion or nearly 90 percent come from transactions within the European Union.[401]

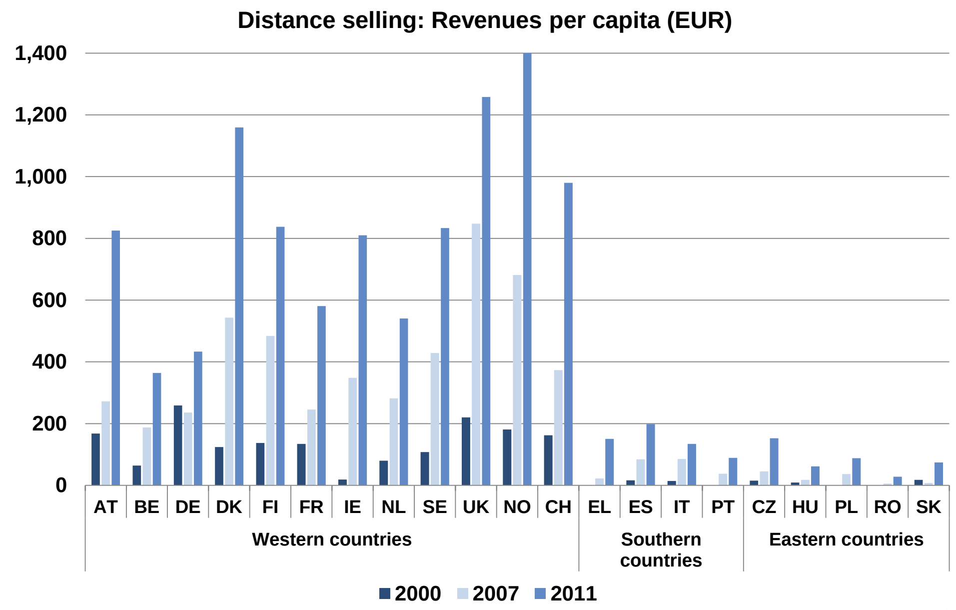
However, the European landscape is somewhat heterogeneous. In 2012, the bulk of the revenues is generated in the United Kingdom, France and Germany, which represent about 60 percent of the total European market[402] and 70 percent of the EU market.[403] The turnover growth rates in France, Belgium, Italy, and Spain range around 20 percent[404] and in Germany more than 25 percent.[405] Likewise, growth figures in some

**398** European Commission (2012), Commission staff working document, Online services, including e-commerce, in the Single Market, p. 4.
**399** Ibid.
**400** Ecommerce Europe (2013), Europe B2C Ecommerce Report 2013 (light version), p. 8, and EMOTA/EDiMA (2012), E-Commerce Developments in Europe, presentation at the 4th Annual European E-Commerce Conference 2012, slide 5.
**401** Ecommerce Europe, European e-commerce to reach over €300 billion in 2012, press release 11 December 2012.
**402** EMOTA/EDiMA (2012), E-Commerce Developments in Europe, presentation at the 4th Annual European E-Commerce Conference 2012, slide 6.
**403** Ecommerce Europe, European e-commerce to reach over €300 billion in 2012, press release 11 December 2012.
**404** Ecommerce Europe, European e-commerce to reach over €300 billion in 2012, press release 11 December 2012.

countries in Eastern Europe are noticeably high. Poland and the Czech Republic, for example, have expected growth figures ranging between 25 percent and 30 percent.[406]

The dynamic growth in e-commerce results in increasing shares of online trade on total retail trade, with more than 20 percent in the UK, followed by more than 12 percent in the Scandinavian countries and nearly 10 percent in France, Germany, Switzerland and Austria.[407] Assuming the UK as trend setter there is still a huge potential in e-commerce.

Figure 3-38 B2C Distance selling (including e-commerce) turnover per capita in Europe (2000, 2007 and 2011)




Sources: Based on EMOTA (2000), IMR Smart knowledge base (e-commerce revenues 2007 and 2011) and Eurostat (population data).

Notes: No data for 2000 for EL, PT, PL and RO.

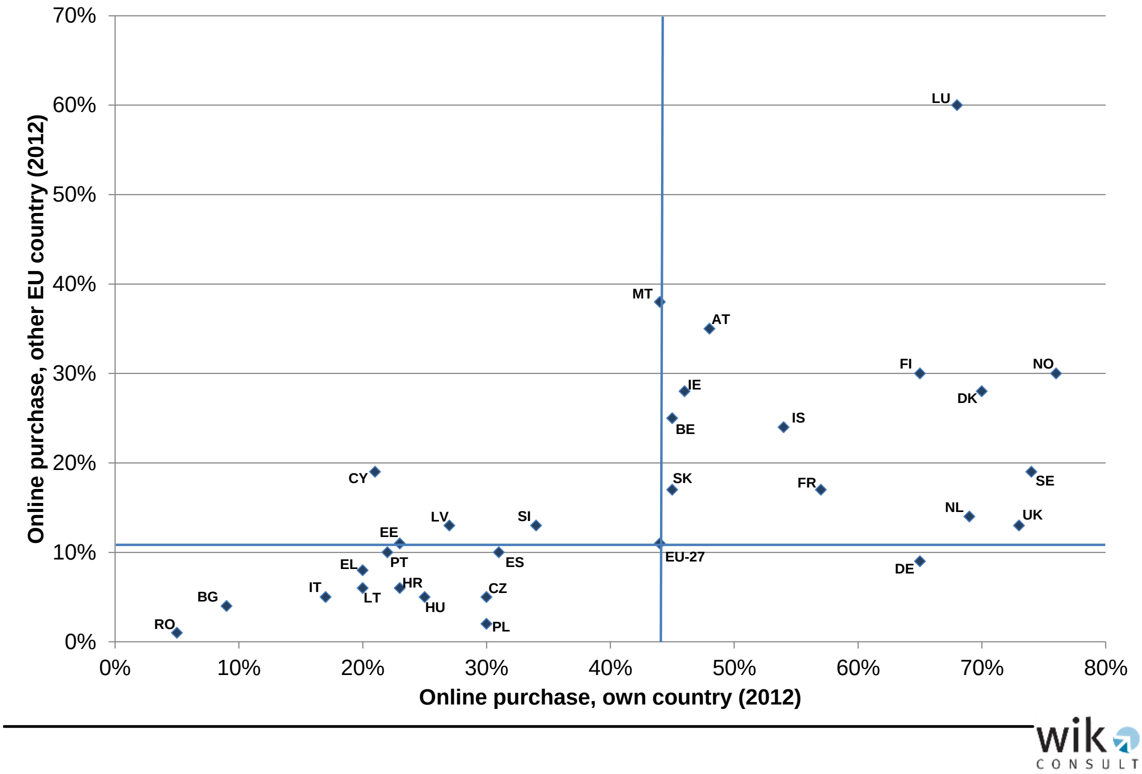
Figure 3-38 presents the distance selling turnover per capita of EU/EEA countries and Switzerland for the years 2000, 2007 and 2011. It should be noted that the differences in the level of distance selling purchases between the country groups is also linked to the average level of income which is substantially lower in the Southern and Eastern countries compared to the Western countries. However, the differences between countries within a country group shows that in many Western countries, e.g. Belgium

**405** EMOTA/EDiMA (2012), E-Commerce Developments in Europe, presentation at the 4th Annual European E-Commerce Conference 2012, slide 7.
**406** Ecommerce Europe, European e-commerce to reach over €300 billion in 2012, press release 11 December 2012.
**407** EMOTA/EDiMA (2012), E-Commerce Developments in Europe, presentation at the 4th Annual European E-Commerce Conference 2012, slide 8.

and Germany there is still high growth potential. Moreover, the changes over time highlight that distance selling was already an established sales channel in most Western countries before e-commerce started to push the development. In these countries consumers and retailers were already familiar with distance selling and therefore better prepared for the e-commerce challenge than countries without this tradition. Moreover, e-commerce allows even small companies with a limited product portfolio and traditionally local focus to go online and sell their products to a broader public at national and even international level. This is one of the major benefits of e-commerce for postal and parcel operators; it substantially increases their customer base.

With regard to the online purchase behaviour in terms of national and cross-border sales, Figure 3-39 confirms the heterogeneous situation in Europe. In the Eastern and Southern European countries e-commerce is firstly underdeveloped and secondly more nationally-based (exceptions are the Baltic countries and the islands Malta and Cyprus). In contrast, the Nordic countries, Ireland and UK as well as most continental European countries do not only exhibit a high affinity towards online purchases in their own country but also cross-border (except for Germany).

Figure 3-39 National and cross-border online purchase in EU/EEA countries (2012)



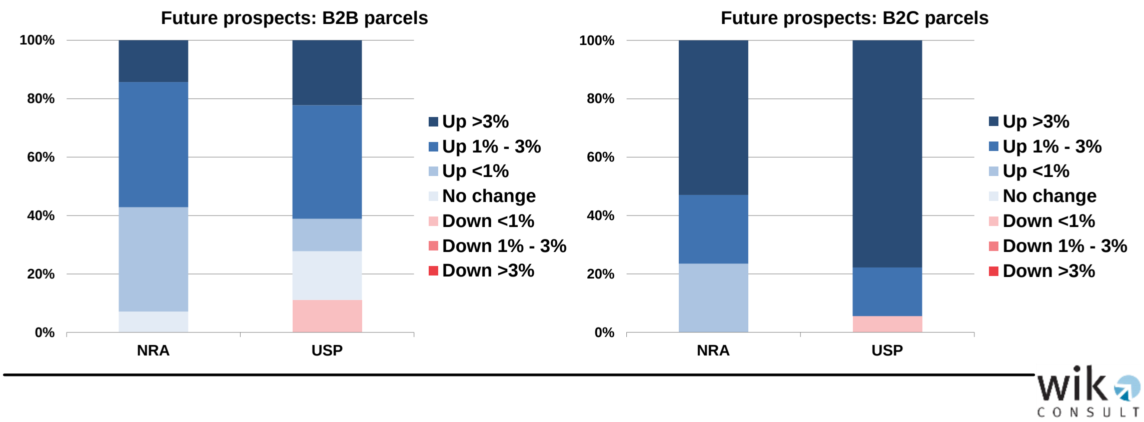

Source: Eurostat (Percentage of individuals who ordered goods or services over the Internet from sellers from national sellers and from other EU countries respectively in the last 12 months).

Note: 2011 figures for CZ, DK and NL.

CEP-Research stresses three trends in cross-border e-commerce: First, activities tend to be higher in countries with low product availability in the home market (i.e. in countries with relatively small product markets). This is impressively confirmed by the example Luxembourg in Figure 3-39. Second, Europeans tend to buy from websites in countries with similar cultural or linguistic ties. Examples include Belgians buying from French or Dutch websites or Austrians and Swiss purchasing from German suppliers.[408] 93 percent of Austrians and 88 percent of Swiss have already bought online from foreign retailers in Germany while only 24 percent of Germans have ordered goods in Austria, resp. 11 percent in Switzerland.[409] Moreover, the German speaking countries like to buy online in the UK, the USA, China and (for the Swiss) France.[410] Third, the European Commission already emphasised in its 2009 report certain caveats in terms of the development of cross-border e-commerce, including the efficiency of the postal system. Accordingly, consumer worries would include 'receiving and returning goods' and 'delivery times being too long or delivery at home problematic'.[411] Notwithstanding the deficiencies in some countries, the European Commission, in its Digital Agenda for Europe, aims to have 50% of EU citizens shopping online by 2015, with 20 percent buying cross-border.[412]

#### 3.3.1.3 Future prospects

Figure 3-40 Expectations of volume development in the B2C and B2B segments




Source: WIK survey.

Note: 17 NRA and 18 USP responses for B2C, 14 NRA and 18 USP responses for B2B.

**408** Paul Needham (2012), European e-commerce boom presents Posts with opportunities and threats, CEP-Research 28 September 2012.
**409** Deutsche Post DHL/tns infratest (2012), Einkaufen 4.0 [Shopping 4.0], p. 75.
**410** Ibid. p. 76.
**411** European Commission (2009), Report on cross-border e-commerce in the EU, Commission staff working document, SEC(2009) 283 final, p. 11.
**412** European Commission (2011), Digital Agenda Scoreboard, Commission staff working paper, SEC(2011) 708, p. 12-13.

The expectations of future parcel development differs between the B2C and the B2B segment, although the vast majority of respondents expects growth in both segments. In the B2B segment, half of the national regulatory authorities as well as half of the universal service providers expect annual growth rates equal or greater than one percent which is in line with a moderate growth in economic activities. In the B2C segment, expectations are much more optimistic, especially under consideration of e-commerce growth rates of 19 percent in 2012.[413] Approximately 80 percent of the universal service providers expect growth rates above three percent and 15 percent at least growth rates above one percent.

Generally, the B2C segment is expected to grow at higher rates than the B2B segment. Geopost, the parcel & express subsidiary of French La Poste and responsible for the European parcel & express network DPD/Chronopost, estimates that the B2C segment will grow in average 6 and 8 percent per year while the B2B segment will increase in average only 2 percent until 2020 in Europe.[414] Moreover, e-commerce will not only push the demand for domestic parcel services but also for cross-border parcel services. IMRG estimates that by 2020 30 percent of global parcel movements will be cross-border.[415]

National postal operators and parcel carriers confirm this trend in their market expectations. BIEK/Germany, for example, expects an average growth in shipments of 4.2 percent per year until 2017 driven by e-commerce but also by the stable economic development in Germany. Express shipments are expected to increase less (3 percent per year) than parcels (4.3 percent per year). Finally, the association estimates that cross-border shipments grow more (4.9 percent) than domestic shipments (4.1 percent).[416] PostNL also expects limited growth in B2B shipments (domestic and cross-border, GDP growth plus one percent) and dynamic growth in the B2C segment of 9 percent.[417] They further outline that B2B is challenged by e-commerce because producers sell directly to consumers instead of using wholesalers and retailers. In contrast, the B2C segment (particularly within the Benelux) is seen as growing area.[418] Deutsche Post expects an average growth in B2C of 11 to 13 percent and B2B 3 to 5 percent until 2015.[419]

Overall, it is obvious that e-commerce is transforming the B2C parcel delivery and overall parcel & express services. Historically seen as ‘unattractive, low-margin and

---

**413** See CEP Research (2013), Parcel operators reap the rewards of 19% European e-retail growth, 28 May 2013.
**414** See CEP Research (2013), GeoPost plans European B2C parcel delivery points network, 5 April 2013.
**415** See Paul Needham, European e-commerce boom presents Posts with opportunities and threats, CEP Research 28 September 2012.
**416** See BIEK (2013), KEP-Studie 2013 [CEP study 2013], p. 13.
**417** See PostNL (2013), Q4 & FY 2012 Results Update 2015, 25 February 2013, slide 25.
**418** See PostNL, Annual Report 2012, p. 24.
**419** See Deutsche Post DHL (2013), UPS Roadshow, Madrid 16 January 2013, p. 41

costly to operate'[420] national postal operators as well as parcel & express carriers now adapt and expand their services to better meet the needs of e-retailers and their customers at national as well as international level.

## 3.3.2 Competition in parcel and express markets

### 3.3.2.1 Market players and business segments

Basically, we identified at least eight groups of parcel and express operators that are active either in domestic or cross-border parcel and express markets, or in both.

The four international integrators DHL, FedEx, UPS and TNT Express[421] operate on a global scale and have full ownership or, at least, full operational control on all transportation assets, including an air network with scheduled flights.[422] They also have integrated IT networks for data handling in place that allow for example the tracking of shipments across borders. The integrators are able to provide international end-to-end deliveries within their own network and can provide highly reliable, time definite cross-border delivery services.

The second group consists of national postal operators that have built up a road-based, pan-European parcel network. These are La Poste's subsidiary Geopost (under the DPD branding) and Royal Mail's ground network GLS. Both networks have their origin in co-operations of German forwarding companies ('German Parcel' and 'Deutscher Paketdienst') that built up international links to other European countries. La Poste and Royal Mail continued the European strategy of the parcel networks. Both, DPD and GLS provide domestic as well as cross-border parcel services in most European countries and used to focus on B2B shipments.

The third group consists of national postal operators that have launched regional networks for providing domestic and cross-border parcel services in specific countries. These are for example Austrian Post with its European Distribution Network EURODIS that focusses on B2B shipments and offering combined delivery of parcels and pallets with defined transit times in Europe.[423] The Nordic postal operators, PostNord, Itella and Norway Post offer parcel and logistics/freight services in the Nordic countries. Additionally, Itella is GLS partner in the Baltic countries. Particularly Posten Logistik (the Swedish parcel and logistics division of PostNord) also offers domestic B2C services

**420** See Paul Needham (2009), E-commerce drives European B2C parcel growth, CEP Research 10 July 2009.
**421** After the failed merger with UPS, TNT Express focus on its core business in Europe and from/to Europe ('Connect Europe to the rest of the world'), see TNT Express (2013), 4Q12 results presentation, 18 February 2013, slide 3.
**422** The importance of air transportation networks is illustrated by the fact that DHL acquired interest in US freight airline ABX (‚Airborne') in 2003, when DHL entered the domestic US market.
**423** See www.eurodis.com

under the branding ‘MyPack’ in Denmark, Finland, Norway and Sweden.[424] Other examples are PostNL that offers domestic parcel services in Belgium and the Netherlands (both, B2B and B2C)[425], Portuguese CTT Correios that offers parcel and express services in the Iberian Peninsula (via its subsidiary Tourline Express) and Eesti Post that extended its parcel operations to its Baltic neighbours and actively promotes B2C delivery.

The further group consists of national postal operators without any strong, ‘visible’ international ambitions, e.g. Polish Post, Spanish Correos and many of the Eastern postal operators. National postal operators always provide domestic parcel services which are part of their universal service obligations.

National postal operators have the opportunity to organise cross-border parcel services by international agreements in addition to their individual international strategies (if any). One possibility is for example to join the E-Parcel Group (EPG), a cooperation of 29 European postal operators and USPS which is managed by the IPC, the International Postal Corporation. Another possibility for incumbent postal operators is to make use of UPU agreements (particularly for cross-border services to countries outside the EU/EEA).

Additionally, there are freight forwarders who also provide parcel and express services in more than one country, e.g. DB Schenker in the Nordic countries or French SNCF Geodis basically with a focus on B2B shipments.

In addition to the four integrators and national postal operators there are still many small and medium-sized parcel, express and courier companies with focus on domestic B2B shipments. Examples are MRW in Spain and Portugal, Ducros Express in France (formerly DHL Express France), Nightline in Ireland and Siodemka in Poland. However, during the last two decades the number of independent B2B parcel & express operators declined i.a. due to the expansion of the international networks particularly DPD and GLS (and now FedEx).

In countries with highly developed mail order business (before e-commerce started its success story), i.e. in France, Germany and the UK, large mail order companies launched service providers specialized on B2C delivery. These are for example Yodel (UK, formerly Home Delivery Network HDN, sister company to Shop Direct Group, formerly Littlewoods)[426], Hermes (Germany, launched by the Otto group), and Mondial Relay (France, launched by 3 Suisses/Otto group).

**424** See http://www.posten.se/en/Logistics/Parcels/Pages/MyPack.aspx.
**425** See PostNL, Annual Report 2012, p. 23.
**426** Yodel was launched after the acquisition of the domestic B2B and B2C business of DHL Express in the UK through its subsidiary Parcelpoint. Both, Home Delivery Network and Parcelpoint, form Yodel (see http://www.yodel.co.uk/about/introducing-yodel/the-yodel-story.aspx)

Moreover, in some countries competing mail operators (e.g. Unipost in Spain, PIN in Germany, Sandd in the Netherlands and InPost in Poland) have recognized the growth potential of e-commerce driven deliveries and extend their operations to B2C deliveries (at least for light-weight packages and parcels). This can also be observed in the cross-border mail business where operators like Spring, DHL Global Mail and the recently founded joint venture between Swiss Post and La Poste, Asendia, also focus on B2C deliveries.

Overall, the competitive landscape is very manifold and characterized by a multitude of institutional arrangements to efficiently organize national and European parcel & express services.

*Blurring business segments*

While there were clear segment delineations a decade ago, the distinction vanishes especially between express and deferred services. Two main impacts contributed to this development. First, routing times for standard parcels improved during the last years and additional services, like track-and-trace, became a quasi-standard for deferred and even standard USO parcels in many countries. Second, business customers switched from premium express to deferred express services to save costs, a trend promoted by the economic crisis in 2008/2009.

Furthermore, there is a convergence between the B2C and the B2B segment insofar that typical B2B parcel operators (slowly) expand to B2C delivery services in countries with substantially growing B2C segments. Many traditional B2B providers (e.g. DPD and GLS) started to provide B2C services also pushed by their customers who increasingly sell to consumers instead of using the traditional retail channels. However, switching from B2B to B2C challenges the existing infrastructure of parcel operators, particularly the organization of the last mile, i.e. delivery to consumers. Additionally, distance selling needs efficient return channels for goods that are not accepted by the consumer.

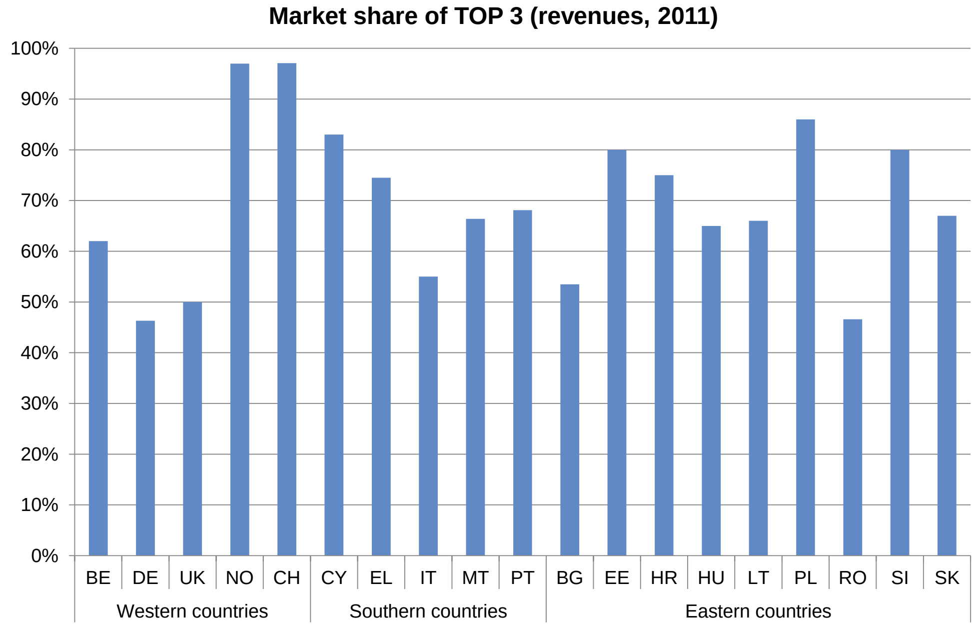
Driven by increasing e-commerce in recent years, the expectations on service level of many private customers increased, resulting in improved customer services, e.g. after-sale services like return solutions. There is also a tendency to faster deliveries in the B2C segment, e.g. with guaranteed next-day delivery services like Amazon Prime or instant delivery services like Shutl (see Case study 3-16). In this example classical courier services migrates into the B2C segment.

This general trend basically intensifies competition in domestic parcel markets because the number of players that compete with each other increase particularly in the B2C segment.

### 3.3.2.2 Domestic parcel and express markets

The domestic parcel services account for approximately 70 percent of total revenues and approximately 90 percent of volume of the total parcel and express markets.[427]

Figure 3-41 TOP3 (2011) market share in domestic parcel & express markets




Source: WIK survey.

Note: 2012 figures for HU, LT, MT, PT, SK. Based on volume figures for CY and LT. No answers for the missing countries.

In many countries the TOP 3 (the three largest parcel and express operators) achieve a combined market share above 60 percent (see Figure 3-41). We estimate that this is also the case in Austria, France and the Nordic countries (DK, FI, SE) additional to the reported countries in the figure. However, in some countries, notably in Germany and the UK but also in Italy, and, we estimate, in Spain the level of market concentration is lower i.e. these markets are more competitive.

Additional to the national postal operators, important players in the domestic parcel & express markets are typically the international integrators DHL, UPS and TNT Express as well as DPD and GLS partners (that may overlap insofar as some national postal operators are also DPD partners, for example PostNord in Denmark and Sweden). Particularly FedEx used to play a minor role in European domestic parcel markets. FedEx mainly focusses on the international B2B segment and only recently started

**427** A.T. Kearney (2012), Europe's CEP Market: Growth on New Terms; CEP Research (2013), GeoPost plans European B2C parcel delivery points network, 5. April 2013.

providing domestic services in order to better meet the needs of their international customers in domestic markets (see Case study 3-13).[428]

Case study 3-13 FedEx' expansion strategy in the European parcel and express markets

FedEx is one of the world's largest freight and parcel companies with focus on domestic overnight express services in the USA and international priority deliveries.[429] FedEx has a relatively limited network in a number of European countries. Its presence is strong in only a few European countries.[430]

In recent years, FedEx made strategic investments to strengthen its position in the European market. The strategic objectives were to close gaps in the intra-European ground services, to expand domestic services in selected European countries, and to increase volumes to benefit from economies of scale and density.[431] FedEx applies a threefold strategy to achieve these objectives:

First, FedEx pursues an organic growth strategy by investing in own facilities. In 2009, FedEx expanded its primary European hub at Paris, with Charles de Gaulle Airport becoming FedEx' largest hub outside the USA. In 2010, FedEx relocated another hub from Frankfurt to new facilities in Cologne (following restrictions on night flights at Frankfurt).[432] The hub focusses on collecting packages from Central and Eastern Europe, In 2011, the organic growth strategy was fostered with the decision to build 38 new stations in the fiscal year 2012[433] and 56 new stations in 2013. The expansion focusses on selected countries, in particular on Belgium, Denmark, France, Germany, and Italy.[434] Furthermore, FedEx increased investment in their fleet of vehicles to improve the connectivity particularly of their ground network.

Second, FedEx expanded its network by acquiring several companies in Europe. In 2012, FedEx acquired Tatex, a French business-to-business express provider and Opek, a Polish courier company, both providing domestic express and deferred services. Both companies have only small market shares in their home countries but FedEx benefits from the expansion of its ground network with one major hub in Paris, six regional hubs and 35 shipping centres throughout France as well as 3 hubs and 44 stations in Poland.[435]

Third, FedEx started expanding its domestic services in seven European countries, namely in Belgium, Denmark, France, Germany, Italy, Luxembourg, and the Netherlands. FedEx may thus bundle domestic with international services and offer one-stop services to its customers with both domestic and international demand.[436] Furthermore, FedEx slightly adjusted the

**428** See Michael Ducker, Executive Vice President and COO of FedEx, Presentation at the FedEx Investor Day, October 2012.
**429** See FedEx, Annual Report 2012, p. 48.
**430** See European Commission (2013), COM IP/13/68, 30 January 2013.
**431** See Michael Ducker, Executive Vice President and COO of FedEx, Presentation at the FedEx Investor Day, October 2012.
**432** See FedEx website, http://news.van.fedex.com/intl/region/emea.
**433** FedEx' fiscal year starts April, 1st and ends March, 31th. FedEx Annual Report (2012), p. 4.
**434** See Michael Ducker, Executive Vice President and COO of FedEx, Presentation at the FedEx Investor Day, October 2012.
**435** See FedEx website: http://investors.fedex.com/phoenix.zhtml?c=73289&p=irol-newsarticle&ID=1694361 and http://news.van.fedex.com/fedex-acquire-polish-shipping-company-opek-spz-oo-0.
**436** See Michael Ducker, Executive Vice President and COO of FedEx, Presentation at the FedEx Investor Day, October 2012.

focus from express to deferred business-to-business services in response to the shift in demand and to achieve a better utilization of the network capacity.[437]

Table 3-11 Role of incumbent postal operators in domestic parcel & express market (2011)

| <10% market share | 10-20% market share | >20% market share |
|---|---|---|
| Bulgarian Posts (BG)<br>Cyprus Post (CY)<br>ELTA (EL)<br>Correos (ES)<br>Polish Post (PL)<br>CNPR Compania Nationala Posta Romȃna (RO) | bpost (BE)<br>Croatian Post (HR)<br>An Post (IE)<br>Poste Italiane (IT)<br>Lithuanian Post (LT)<br>Latvijas Pasts (LV)<br>MaltaPost (MT) | Österreichische Post (AT)<br>Česká pošta (CZ)<br>Deutsche Post DHL (DE)<br>Post Danmark/PostNord (DK)<br>Eesti Post (EE)<br>Itella (FI)<br>La Poste (FR)<br>Magyar Posta (HU)<br>PostNL (NL)<br>CTT Correios (PT)<br>Posten/PostNord (SE)<br>Slovenian Post (SI)<br>Slovenska Posta (SK)<br>Royal Mail Group (UK)<br>Swiss Post (CH)<br>Norway Post (NO) |

Source: WIK survey and WIK research.

Table 3-11 summarizes our estimations on the market position of incumbent postal operators in their respective domestic parcel & express markets. We estimate that the incumbent postal operators of most Member States have a market share above 20 percent in their domestic parcel & express market. However, their relatively strong position is mainly supported by their dominance in the B2C segment (parcel delivery) and less by their role in the B2B segment and, particularly, in the express segment (where national postal operators usually play a minor role).

In all Member States the majority of domestic parcel & express providers focus on B2B shipments. As outlined in section 3.3.2.1 a multitude of market players is active in domestic markets in this segment. Consequently, the domestic B2B segment is more competitive and universal service providers usually play a smaller role than in case of domestic C2C and B2C shipments. PostNL, for example, reports a market share of 15 percent in the Dutch B2B segment[438] and Austrian Post a share of 22 percent in the Austrian one.[439] In contrast, both companies estimate their share in the respective B2C segments above 70 percent. Deutsche Post DHL estimates its market share in the

**437** See CEP Research (2012), Shift to ‘international economy’ prompts further FedEx reorganisation, 18 September 2012.
**438** See PostNL, Annual Report 2012.
**439** See Austrian Post, Annual Report 2012 Part I.

German B2C segment above 50 percent and in the German B2B segment at around 20 percent.[440] Another example for the dominance in the B2C segment is La Poste's French parcel operations under the branding 'Coliposte' that has a market share above 60 percent in the French B2C segment reported by La Poste.[441]

Basically, universal service providers have a first mover advantage when it comes to B2C shipments. Due to their nationwide delivery networks combined with the opportunity to jointly deliver parcels and letter post in less densely populated areas and their nationwide branch networks they are principally better prepared for delivery of single parcels to households than classical B2B parcel & express operators. Many universal service providers, particularly in the Western countries, have used this advantage and actively improved parcel delivery services by establishing standard next day delivery services and tracking & tracing (e.g. Deutsche Post, PostNL, the Nordic postal operators, Austrian Post and bpost) and expanding their network of pick up points resulting in strong market positions for B2C delivery.

As outlined in section 3.3.1.2, the B2C segments are differently developed among the European countries. Particularly, in the Southern and Eastern countries the domestic B2C segments is relatively small. This may be explained by the fact that because distance selling is less established, and because average income and internet usage rates are lower. However, these markets see more dynamic growth in e-commerce than more mature e-commerce markets.

Due to these growth perspectives traditional B2B operators increasingly enter the B2C segment in the Western countries but even in countries with relatively small B2C segments for example MRW and Seur in Spain. Additional to local players the national partners and/or subsidiaries of DPD and GLS extend their services to this growing segment. Even the integrators UPS and FedEx are interested for market entry (see section 3.3.3 for more details). To some extent the B2B operators follow the changing needs of their business customers who increasingly sell goods directly to consumers instead of using traditional retail channels. Moreover, B2B operators aims at benefiting from the growing customer base in this segment.

- UPS is expanding their B2C services for example with the acquisition of Kiala, which provides approximately 6,700 'shop-in-shop' access points in Belgium, France, Spain, Luxembourg, and the Netherlands, and UPS plans to roll-out the same concept in Germany and the UK with 4,000 access points, respectively (see Case study 3-20).

- DPD pursues a strategy of organic growth with minor acquisitions and strategic investments. In order to increase the share of B2C volumes from currently 20 to 50 percent in five years, DPD plans a gradual expansion of access points

**440** See Deutsche Post DHL (2013), UPS Roadshow, Madrid 16 January 2013, p. 42.
**441** See Group La Poste, Registration Document 2012.

European-wide with an initial focus on Western countries, namely Germany and the UK.[442]

- A similar strategy is pursued by GLS by investing in additional access points, also primarily in the mature but larger markets in the Western countries[443] but also in the Baltic countries in cooperation with Itella.[444]

Overall, competition in the domestic B2C segment lower than in the B2B segment but intensifying as traditional B2B players extend their activities to the dynamically growing B2C segment.

#### 3.3.2.3 Cross-border parcel and express markets

The international cross-border parcel and express market accounts for approximately 30 percent of the revenues and 9 percent of the volume of the parcel and express market.[445] This segment is highly concentrated with an average market share of the biggest operators of approximately 75 to 95 percent depending on the country under consideration.[446] The players in most countries are GLS and DPD but also the integrators DHL, FedEx, UPS, and TNT Express.

The level of concentration differs between customer segments. In the B2B segment, the four integrators have a combined market share in the intra-European cross-border express segment of approximately 90 percent. The strongest market player in the intra-European parcel & express market is DHL with an estimated market share of 40-50 percent, followed by UPS with an estimated market share of approximately 20-30 percent, TNT with estimated 10-20 percent and FedEx as the weakest player with approximately 5-10 percent market share.[447] The US-American integrators UPS and FedEx try to improve their market positions in Europe. UPS pursued a strategy of mergers and acquisitions, e.g. the merger attempt with TNT Express (see Case study 3-14). FedEx follows a strategy based on organic growth with targeted investments in existing infrastructure and acquisitions of domestic parcel and express operators in France and Poland (see Case study 3-13).

**442** See CEP Research (2012), Interview - ‘B2C could be 50% of DPD’s business within five years’, 17. September 2012; CEP Research (2013), GeoPost plans European B2C parcel delivery points network, 5. April 2013.

**443** See CEP Research (2012), GLS launches Shop Delivery service in Austria, 13. November 2012; CEP Research (2012),GLS Belgium enhances online shopping through parcel shop delivery, 21. March 2012; CEP Research (2012), GLS Denmark opens 200 new parcel shops in one year, 28 February 2012.

**444** See GLS homepage, https://gls-group.eu/EU/en/news-overview/itella-logistics-new-gls-partner-in-lithuania-and-latvia [15. Mai 2012].

**445** A.T. Kearney (2012) KEP Markt Studie 2011 - Internationales Segment wächst stärker als Inlandsmarkt.

**446** See European Commission (2013), C(2013) 431 final., Case No Comp/M.6570 – UPS/TNT Express, p.130 sqq.

**447** See European Commission (2013), C(2013) 431 final., Case No Comp/M.6570 – UPS/TNT Express, p.130 sqq.

### Case study 3-14 Failed merger of UPS and TNT Express

In March 2012, UPS and TNT Express announced that they had agreed on a EUR 5.16 billion deal to create a new global express and logistics company.[448] Through the merger UPS would get access to an important intra-European road freight network that would substantially strengthen UPS' market position in Europe.

The way for the merger had been paved in May 2011 when TNT's shareholders approved the demerger of TNT Express from the Dutch mail group TNT NV. As of January 1, 2011 TNT Express became a separate company listed at the Amsterdam stock exchange. TNT, renamed into PostNL, hold a minority stake of 29.9% on the ordinary shares of TNT Express N.V.[449]

The Commission received a notification of the planned merger mid of June 2012[450] and decided on 20 July 2012 to start a formal proceeding (a so-called 'phase-II procedure') after finding 'that the notified concentration raises serious doubts as to its compatibility with the internal market.'[451] At the end of January 2013, the Commission decided to block the merger which would have significantly impeded effective competition in the market for small package express deliveries with the EEA in 15 Member States (cf. section 2.3.1.3 above).[452] In expectation of the negative decision UPS had already called off the takeover of TNT Express two weeks before.

The failed merger between UPS and TNT Express has seriously affected the market position of TNT Express in the European express market. The uncertainty about the future business organisation of the merged company resulted in the loss of customers who partly switched to the major competitor DHL Express. DHL Express increased its revenues by 9.3 percent in 2012.[453] Deutsche Post DHL estimates its market share in the European TDI (time definite international) segment to be improved by 3 percentage points from 38% in 2011[454] to 41% in 2012[455] while the market share of TNT Express declined from 16 to 14 percent. After one year of preparing to be merged with UPS TNT Express has now to adapt its business strategy in short term. For this reason the management recently launched a profit improvement program. Part of this program is the divestment of their loss-making businesses in the domestic Brazilian and Chinese markets in order to focus on the European and international operations.[456]

UPS' efforts to improve its global and, particularly, its European market position have failed. In future the company will most probably focus on organic growth and acquisitions of local or national express providers to avoid the confrontation with competition authorities.

After this failed merger, FedEx would possibly have the opportunity to acquire TNT Express. The Commission's investigation made clear that FedEx' current role in the international intra-EEA express services market is relatively small. For this reasons competitive concerns would likely be less serious against a FedEx – TNT Express merger.

---

**448** TNT Express (2012), United Parcel Service and TNT Express to create a global leader in the logistics industry, press release 19 March 2012.
**449** CEP-Research (2011), TNT shareholders okay Express split-off, news 25 May 2011.
**450** European Commission (2012), Case COMP/M.6570 — UPS/TNT Express, Prior Notification of a concentration, OJ C186/9, 26.06.2012.
**451** European Commission (2012), Case COMP/M.6570 — UPS/TNT Express, Initiation of proceedings, OJ C226/3, 28.07.2012
**452** European Commission, Mergers: Commission blocks proposed acquisition of TNT Express by UPS, press release 30 January 2013.
**453** See Deutsche Post DHL, Annual Report 2012, [add page no.]
**454** See Deutsche Post DHL (2012), US Roadshow New York, 11 November 2012, slide 32.
**455** See Deutsche Post DHL (2013), Toronto Roadshow, 5 April 2013, slide 26.
**456** See TNT Express (2013), TNT Express NV 2012, Annual General Meeting of Shareholders, 10 April 2013, slide 15.

The (intra-European) cross-border B2C segment becomes increasingly important for all major players due to e-commerce driven growth. The international integrators as well as the European ground networks DPD and GLS not only improve their domestic B2C services but also combine them with cross-border services.

Additional players in the market are also operators specialized on cross-border mail that are, however, usually associated with incumbent postal operators like PostNL's subsidiary Spring, DHL Global Mail and the recently founded joint venture between Swiss Post and La Poste, Asendia, has also a focus on B2C deliveries.

DHL Global Mail, for example, expanded its business to cross-border B2C parcel services using a mixture of bilateral agreements with national postal operators, international agreements like E-Parcel Group and other partners, including sister companies of DHL Express or DHL Freight.[457] Furthermore, DHL set up an international online portal to attract small and medium-sized e-retailers.[458]

National postal operators use the opportunity to organise cross-border parcel services by international agreements in addition to their individual international strategies (if any). One possibility is for example to join the E-Parcel Group (EPG), a cooperation of 29 European incumbent postal operators plus the US American USPS which is managed by the International Postal Corporation IPC (see Case study 3-15). Another possibility is to make use of UPU agreements (particularly for cross-border services to countries outside the EU/EEA). So far, international and domestic parcel & express companies without linkage to national postal operators have not the opportunity to join these international agreements. However, there is scope for bilateral agreements between 'independent' parcel & express operators and incumbent postal operators. The German Hermes group for example cooperates with Austrian Post to deliver cross-border parcels in Austria (and vice versa).[459]

**457** See CEP Research (2011), DHL targets European cross-border B2C parcels market, 11. February 2011 and interview DHL Global Mail.

**458** See CEP Research(2012), DHL Express targets SMEs with new MyDHL customer portal, 04. July 2012.

**459** Interview Hermes.

**Case study 3-15 National postal operators establish a European-wide network for cross-border delivery of parcels**

The Enhanced Parcel Group (E-Parcel Group or EPG) organises cross-border delivery of parcels based on a cooperation of European national postal operators and USPS (United States). The group was founded in 1996 as a cooperation of nine postal operators from northern Europe to provide business-to-business two-day parcel services, using the European road network.[460] Currently, the group consists of 29 national postal operators; from the EU-27/EEA only Cyprus Post, the Romanian and the Bulgarian Post have not yet joined the group.[461] It provides priority parcel service with an increasing share of business-to-consumer services.[462] The EPG members use the cooperation to deliver parcels abroad. The delivery service must meet certain quality and technical standards including requirements on transit times, moving from a non-specific to definite delivery day.[463]

An important role in the EPG is played by the International Post Corporation (IPC), a cooperative association of 24 national postal operators which deliver approximately 80 percent of global mail volume.[464] The IPC provides project management for the group, monitoring services to compare the actual performance to formally agreed standards, support to set up and implement improvement action plans if needed, and monthly payment reports to allow a simple invoice and settlement system including an agreed penalty system based on performance. Furthermore, the IPC is also developing added-value and ad hoc services, manages the geographical expansion of the group and ensures collaboration between partners and international institutions.[465]

The EPG uses a barcode-based track-and-trace system for parcels from the submission to delivery to monitor the agreed transit times and quality standards. By means of the track-and-trace system, a standardised interface for relevant delivery data is provided, such as the confirmed date and hour of delivery, or the transit time in the delivery network, which allows the EPG members to exchange information and to monitor the quality.[466] To achieve the defined targets for responsiveness to customer service enquiries, the EPG uses the IPC's Customer Service System (CSS), an automated customer service system linking each postal operator's call centres. The CSS is designed around specified workflow procedures and allows quick responses to customer inquiries for cross-border shipments.[467]

To promote cross-border B2C delivery services IPC developed the 'Easy Return Solution' (ERS). The service started in 2010 with five European postal operators and was adapted by 21 postal operators until February 2013. The IPC aims at extending the ERS to the all EPG members by 2014. ERS allows for a priority postage paid return service for cross-border e-commerce shipments using the EPG's settlement and service system. The system uses a double-barcode label based on EPG's barcodes, one for the accepting or dispatching postal operator and one for the authorising post receiving the returned parcel. The provision of the labels is organized by IPC: the labels are electronically generated and provided to the authorising post, which make them available to the e-retailers. Consumers get the return labels from the e-retailers and can drop their returns at the domestic postal operator's access points without any further costs.[468]

**460** See IPC Annual Report (2011), p. 29.
**461** See http://www.ipc.be/en/Services/EPG/Operators.aspx (April 2013).
**462** See CEP Research (2012), IPC priority parcel network covers 29 countries with Austria, Latvia, Malta additions, 14. June 2012.
**463** See IPC Annual Report (2011), p. 31.
**464** See CEP Research (2012), Interview - 'E-commerce can save Posts' says IPC chief, https://www.cep-research.com/cepresearch/repository/news/2012/october/191012.html?hidectrl=true
**465** See IPC Website, http://www.ipc.be/en/Services/EPG.aspx.
**466** Interviews with Deutsche Post DHL, IPC website, http://www.ipc.be/en/Services/EPG.aspx.
**467** See IPC Annual Report (2011).
**468** See IPC (2013), E-Commerce Flash, Issue 2, 1 March 2013, p. 9.

### 3.3.3 Meeting the challenges: Business strategies of key market players

In this section we focus on the general trend of parcel & express operators to grow in the domestic and cross-border B2C segments. As outlined in the sections before traditional B2B operators increasingly enter the B2C segment because their traditional business is characterized by lower growth rates and depends strongly on the general economic development. However, B2C delivery has specific requirements regarding cost-efficient organisation of the last mile (delivery to consumers) and the management of returns.

*Information for recipients and flexible delivery options*

Due to the e-commerce driven growth in the B2C segment, European parcel and express operators face several challenges related to the their last mile delivery network. The focus shifts from company-based to consumer-oriented perspective with the objective to provide a convenient delivery and return service. In particular, the parcel operators increase their flexibility regarding the time and place of delivery to suit consumers preferences. Furthermore, there is a tendency to faster deliveries, e.g. with guaranteed next-day delivery services like Amazon Prime or instant delivery services like Shutl (see Case study 3-16). By providing fixed time-windows for the delivery or alternative delivery points, such as collection points or parcel lockers, the parcel operators do not only increase the convenience for the recipients but also decrease their delivery costs for the last mile, e.g. by avoiding failed delivery attempts. Moreover, the parcel operators provide additional information for the consumers, e.g. track-and-trace services based on GPS-systems or notification services about the status of their shipments via SMS or e-mails. Thereby, recipients are not only informed about delivery time windows but might also change the point or time of delivery during the transport (see Case study 3-17). Additionally, the B2C segment related to distance selling and e-commerce requires the provision of reliable return channels which is a challenge especially for parcel and express operators without a branch network as well as for domestic operators in the context of cross-border parcels.

Case study 3-16 Innovative delivery solutions by Shutl

Shutl provides a web service that connects local same-day delivery companies with multi-channel retailers. Shutl organises same day point-to-point home deliveries either within 90 minutes after the online purchase or within a one-hour window of customer's choice which might vary from retailer to retailer. The start-up began its operation in London in 2010 and expanded its business to over 50 cities in the UK, covering more than 75 percent of all households in the UK, by end of 2012. In March 2013, Shutl started its services in New York City, San Francisco and Chicago. The company plans to expand to 17 additional cities in the USA and Canada.[469]

**469** See CEP Research (2013), 'Shutl challenges Amazon with North America launch', 27 February 2013.

Retailers can integrate Shutl as a delivery option on their e-commerce platform. Customers may choose between two delivery options, ‘now’ and ‘later’, as long as they live close enough to the retailer’s physical store, typically within a 10-mile radius. Delivery prices vary according to distance and delivery time but usually do not exceed 10 Pounds. Some retailers provide even free delivery subject to the value of the purchase.[470]

As Shutl provides delivery only in a defined area close to local retailers, it can ensure fast home delivery. Shutl avoids the costs of a hub-and-spoke network or warehouses by allocating spare capacities of small local courier companies to local retailers. Therefore, the delivery service is not much more expensive, and sometimes even cheaper, than standard multi-day delivery.[471] The executing courier company is chosen according to their capacities, their price, and their performance history including the feedback of customers.[472]

Shutl’s business model includes several innovations. First, Shutl provides an online marketplace for short distance delivery services. Thereby, the capacities of this fragmented market with many small companies are aggregated. Shutl provides the capacities of small courier companies to local multi-channel retailers at low transaction and search costs for the retailers. The utilisation of small companies transport capacities increases and high capacities of large retailers are distributed among different local courier companies, who are not big enough to deal with major retailers. Second, consumers might choose between different delivery times convenient for them. This increases the willingness to buy something online as customers do not have to wait some days until their purchase arrives. Additionally, this lowers the probability of missed home deliveries and the related costs, e.g. for a second delivery attempt or storage for undelivered goods.[473]

Case study 3-17 DPD’s flexible delivery and notification service

In 2010, DPD started a new delivery service with an advanced notification system for home deliveries in the UK. In 2012, DPD expanded this service to Germany, Belgium, Luxembourg, and the Netherlands pursuing a pan-European roll-out. DPD informs the recipients via SMS or e-mail on the day of delivery and proposes a time window. The recipient can decide whether this time is suitable or not and, if not, ask for a delayed delivery on one of the following three days. In this case, DPD will propose at least three alternative delivery times. If the recipient does not react to the notification, the delivery will take place according to the proposed schedule. In the case that the recipient is not at home, i.e. that the delivery attempt fails, the recipient is informed and might choose between several options for a new delivery, including an alternative delivery address, a deposit place or a pick-up point.[474]

**470** See Lauren Indvik (2013), ‘Shutl Pledges to Help Retailers Take on Amazon With Same-Day Delivery’, 28 February 2013, http://mashable.com/2013/02/28/shutl/.

**471** See CEP Research (2010), ‘Same-day courier aggregator offers cure for e-tail delivery headache’, 03 December 2010.

**472** See Shutl website, http://shutl.com/about.

**473** See David Woodward (2010), ‘Courier service Shutl promises a revolution in online delivery. It's about time, says founder Tom Allason’, http://www.director.co.uk/ONLINE/2010/08_10_tom-allason-shutl.html.

**474** See CEP Research (2012), DPD expands 'Predict' service to Belgium and Luxemburg, 15 August 2012; DPD website.

*Improving access by pick up points*

Collection points, which are typically organised as 'shop-in-shop'-solution in brick-and-mortar retailer's shops, provide some advantages to home delivery for the delivery companies as well as for the customers. Parcel carriers are able to provide cost-effective B2C services without the necessity for expensive home delivery networks. The logistics related to delivery and return shipments are similar to B2B services as a number of door-to-door deliveries are consolidated and substituted by a smaller number of pick-up and return points. Based on this, the usage of collecting points is sometimes considered as a 'business-to-retail' (B2R) service.[475] Moreover, the collecting points allow the storage of parcels which could not be delivered at first attempt and thereby decrease the costs of additional delivery attempts.[476] There are different strategies of the parcel and express observable related pick-up points.

Some providers, especially mid-sized parcel operators with a restricted European scope, cooperate with domestic postal operators with focus on the geographical extension of their services, like for example Hermes with Austrian Post[477] or Yodel and PayPoint with TNT Post (see Case study 3-18).

Case study 3-18 CollectPlus (UK)

CollectPlus was founded in 2009 as a joint venture between the parcel home delivery company Yodel and the retail payment network PayPoint and provides more than 4,800 local shops in the UK, covering 80 percent of UK's households within one mile of the collecting points. CollectPlus provides distance sellers free drop-off and collect shipments at the local stores, which are open early to late on seven days per week. In 2012, TNT Post and CollectPlus teamed up to provide cross-border deliveries through TNT Post's international network. The main target group are small and medium sized distance seller from the UK by providing a convenient way to handle their increasing shipments to other European countries, e.g. Greece, France, the Netherlands and Finland.[478] Additionally, CollectPlus started a cooperation with Amazon in 2012 providing delivery and return points to customers. Altogether, CollectPlus worked with 125 retailers with 5 million parcels in 2012. Within the UK, Yodel organises the transport to and from the collecting points while the retail partners use PayPoint terminals for transactions.[479]

The European ground-networks DPD and GLS pursue a slightly different strategy. Even so, there are also cooperation with domestic providers to expand their delivery network in specific countries (see Case study 3-19), both operators primarily invest in own

**475** See CEP Research (2013), Interview - UPS targets B2C markets with Access Point outlets, 8 February 2013.
**476** See CEP Research (2012), GLS signs strategic alliance with French B2C specialist Mondial Relay, 11 September 2012.
**477** See Österreichische Post (2012), Annual Report 2012.
**478** See CEP Research (2012), TNT Post and Collect+ launch international parcel service in UK, 6 November 2012.
**479** See CEP Research (2012), Amazon delivers in Britain via CollectPlus outlets, 21 August 2012.

‘shop-in-shop’ pick-up points in several countries, either operated by franchise partners or subsidiaries.[480]

Case study 3-19 Cooperation between GLS and Mondial Relay in France

In 2012, GLS announced a cooperation with Mondial Relay, providing access to 4,300 access points (‘Points Relais’) in France which are located within 12 minutes of almost 100 percent of French households. Recipients of GLS parcels might choose between home delivery and to pick-up the parcels directly at the collecting points. Further, parcels which could not be delivered at first attempt will be stored at a nearby Point Relais.[481] This cooperation expands GLS’ collecting point network in European countries. In Belgium, recipients might choose between home delivery and 160 GLS collecting points. If the parcel arrives, consumers are notified via SMS or e-mail and might pick-up the parcel in the following ten working days. The service does not only focus on private customers but also on business customers with field service.[482]

The US-American integrator UPS extended its European B2C services with the acquisition of Kiala, a Belgium-based provider of pick-up points, active in five European countries. Further, UPS started to roll-out pick-up points based on the Kiala business model in the UK and plans a roll-out in Germany in 2013 (see Case study 3-20).

Case study 3-20 UPS’ acquisition of Kiala and its growth strategy for the European B2C market

In February 2012, UPS announced the acquisition of Kiala, a Belgium-based company providing delivery points and return channels for online retailers (e-retailers), e.g. Amazon, H&M or Puma. Kiala is active in five European countries, namely Belgium, France, Spain, Luxembourg, and the Netherlands, and operates approximately 6,700 ‘shop-in-shop’ collection points. Kiala handles up to 145,000 parcels per day and realized approximately 50m € revenue in 2011.[483] UPS plans so far that Kiala will operate independently in the immediate future and keeps its brand name in the five countries.[484]

480 See CEP Research (2012), GLS launches ShopDelivery service in Austria, 13. November 2012; CEP Research (2012),GLS Belgium enhances online shopping through parcel shop delivery, 21. March 2012; CEP Research (2012), GLS Denmark opens 200 new parcel shops in one year, 28 February 2012. CEP Research (2012), Interview - ‘B2C could be 50% of DPD’s business within five years’, 17. September 2012.

481 See CEP Research (2012), GLS signs strategic alliance with French B2C specialist Mondial Relay, 11 September 2012.

482 See CEP Research (2012), GLS Belgium enhances online shopping through parcel shop delivery, 21 March 2012.

483 See Kiala Website, http://www.kiala.com; CEP Research (2012), UPS targets European B2C parcels with Kiala acquisition, 16. February 2012; Jeff Berman (2012), UPS expands B2C presence with Kiala acquisition, Logistics Management Magazine, 16. February 2012, http://www.logisticsmgmt.com/article/ups_expands_b2c_presence_with_kiala_acquisition.

484 See CEP research (2012), UPS to keep Kiala independent initially, 17 February 2012.

Kiala started 2001 as a e-commerce delivery specialist providing a platform which brings together customers, online retailer and brick-and-mortar retailer. The idea was to provide a collecting point related parcel service based on close-by ‘shop-in-shop’ delivery and return points, typically located at small business, e.g. newsagents, supermarkets, book stores or dry cleaners.[485] Kiala organizes the data and financial flows of e-commerce activities with their platform and supervises the logistics, which is executed by transport partners.[486] For example, Kiala cooperates with Geodis in France, who took over the transport of Kiala parcels in France.[487] For the provision of collecting points, Kiala offers the retailers a payment for managing the parcels, the necessary equipment, i.e. a handheld which completely organizes the logistics, the prospect of additional customers for their stores as well as an easy opportunity to expand its own business to e-commerce.[488] The advantage for private customers is a high flexibility regarding the time to get their parcels due to the longer opening hours of most Kiala points. Furthermore, Kiala notified their customers by phone, SMS or e-mail when their parcel arrived, which was an innovative services back in 2001.

The acquisition of Kiala strengthens UPS’ position in the five B2C markets in which Kiala already operates and allows the expansion into B2C services in other European countries and a better processing of intra-Europe shipments, e.g. related to cross-border e-commerce. The first step will be the implementation of the Kiala model, branded ‘UPS Access Point’, in the UK in 2012 and in Germany in 2013, with 4,000 planned collecting points in each country. Furthermore, UPS thinks about introducing the model in Italy, the Nordics, Poland and non-European countries in the next years.[489] The mid-run objective of UPS in Europe is the provision of a set of delivery (and return) channels, i.e. a combination of the access point system, UPS’ home delivery services and parcel lockers, from which customers might choose similar to the service ‘UPS MyChoice’, which UPS started in 2011 in the USA.[490]

This strategy with collecting points in different European countries not only strengthens UPS’ market position in the different domestic B2C markets but provides a good position for cross-border shipments related to e-commerce, in particular for small and medium size e-retailers due to the inexpensive return channel.

---

**485** See Peter Henderickx (2010), General Director Benelux Kiala, Presentation at the Study Day of the European Parliament, Kiala, the market reference in the area of Collection Point services – A sustainable last mile parcel delivery model, 18. November 2010, http://archive.greens-efa.eu/cms/default/dokbin/363/363809.session_iv_kiala_peter_henderickx@en.pdf.

**486** See Denis Payre (2003), President & CEO of Kiala, Presentation at the Final BESTUFS I Conference, http://www.bestufs.net/download/conferences/Prague_Nov03/BESTUFS_Prague_Nov03_Payre_Kiala.pdf.

**487** See CEP Research (2011), Geodis boosts B2C with Kiala partnership but drops Tatex takeover, 25 July 2011.

**488** See Kiala Website, https://www.kiala.com/benefits_for_kialapoints.

**489** See CEP Research (2012), UPS to target British, German B2C markets through Kiala, 14. March 2012; CEP Research (2013), Interview - UPS targets B2C markets with Access Point outlets, 8 February 2013.

**490** See CEP Research (2013b), UPS Access Point: Taming the e-commerce delivery beast, 14 February 2013.

Table 3-12 provides an overview of pick-up points of parcel and express operators in Europe. To summarize, parcel and express operators combine the expansion of their B2C services with the roll-out of pick-up points as 'store-in-store'-solutions in Europe. For this reason in many countries number of pick-up points is increasing. This provides consumers alternative ways to receive (and return) parcels and operators a low cost alternative for B2C delivery.

Table 3-12 Pick-up points of parcel & express operators

| **Provider** | **Pick-up points** |
|---|---|
| ACS | 300 pick-up points in Greece. |
| CollectPlus (Yodel, PayPoint & TNT Post) | 5,000 pick-up points in the UK. |
| DHL | 750 pick-up points in the Netherlands (via Selektvracht). |
| DPD | 6,000 pick-up points in Germany (8,000 planned).<br>1,000 pick-up points in Netherlands planned by end of 2013.<br>700 pick-up points in Norway (via partnership with PostNord).<br>450 pick-up points in Poland.<br>350 pick-up points in Portugal (via Chronopost).<br>62 pick-up points in Switzerland (600 planned by end of 2014).<br>5,600 pick-up points in France (7000 planned by end of 2013). |
| GLS | 5,000 pick-up points in Germany.<br>600 pick-up points in Austria<br>4,300 pick-up points in France (in cooperation with Mondial Relais).<br>850 pick-up points in Denmark.<br>200 pick-up points in Belgium 380 pick-up points in Hungary.<br>170 pick-up points in Ireland.<br>235 pick-up points in Italy.<br>400 pick-up points in the Netherlands.<br>450 pick-up points in Poland.<br>100 pick-up points in Portugal. |
| Hermes | 1,500 pick-up points in the UK (3,000 planned in 2013).<br>14,000 pick-up points in Germany.<br>1,600 pick-up points in Austria. |
| InPost | 900 pick-up points in Poland. |
| Kiala / UPS | 4,500 pick-up points in France.<br>700 pick-up points in Belgium & Luxembourg.<br>500 pick-up points in Netherlands.<br>1,000 pick-up points in Spain.<br>4,000 pick-up points planned in the UK (start with 500 in 2012).<br>4,500 pick-up points planned in Germany. |
| Letterbox | 1,500 pick-up points planned in the UK by end of 2013. |
| Matkahuolto | 2,000 pick-up points in Finland. |
| MRW | 1,300 pick-up points in Spain, Portugal, Andorra and Gibraltar. |
| Nacex | 310 pick-up points in Spain, Portugal and Andorra. |
| Schenker | 550 pick-up points in Finland. |
| Seur | 238 sales points and 1,000 retail outlets in Spain. |

Source: WIK research.

*Improving delivery by parcel lockers*

Beside the provision of pick-up points in stores, there is an increasing amount of automated parcel lockers in Europe. Table 3-13 illustrates that the majority of the parcel lockers are provided by the domestic postal operators, who primarily invest in parcel lockers to provide additional delivery options to their domestic consumers. Furthermore, there are also smaller parcel and express operators as well as e-retailers like Amazon, who started to establish parcel lockers. The advantage of parcel lockers is a more convenient reception of parcels for consumers as they might choose the time and place to pick-up their parcels. If the parcel arrives at the locker, the recipient is notified by SMS or e-mail and gets an access code to pick-up the parcel within in specified time-window, e.g. within three days. While parcel lockers of the first generations where constructed for outdoor usage, there is a growing demand for indoor models, e.g. to locate them in shopping malls, which are available at lower costs. Furthermore, the parcel lockers are modular and might be scaled according to the parcel carriers' needs and demand.[491]

Table 3-13 Provision of parcel lockers in Europe

| Company | Number of parcel lockers |
|---|---|
| Amazon | Undisclosed number of parcel locker stations in the UK (2013). |
| BPM-Luxembourg | 5 parcel locker stations in Luxembourg. |
| bpost | Plans to install 150 to 200 parcel locker stations in Belgium (2010). |
| ByBox | 1,500 parcel locker stations in the UK (2012).<br>Operation of parcel locker stations in the Republic of Ireland, France and the Benelux. |
| Deutsche Post / DHL | 2,500 parcel locker stations in Germany (2013).<br>3 parcel lockers as pilot project in Switzerland. |
| Estonia Post | 22 parcel locker stations in Latvia (29 planned) and 114 in the Baltic states. |
| Itella | 38 parcel locker stations in Finland (2010). |
| Kouzelna Almara | 15 parcel locker stations (100 planned by end of 2013) in the Czech Republic. |
| La Poste | 31 parcel locker stations in France (2010).<br>3 pilot projects for returns in France (2012). |
| InPost | 650 parcel locker stations in Poland.<br>400 parcel locker stations in Russia.<br>200 parcel locker stations in the Ukraine.<br>>100 parcel locker stations in in the Czech Republic and Slovakia.<br>170 parcel locker stations in Ireland (in cooperation with Nightline).<br>Plan to install 2,000 parcel locker stations in the UK by the end of 2013. |
| Norway Post | 42 parcel locker stations in Norway (2010). |
| P&T Luxembourg | 12 parcel locker stations in Luxembourg. |
| Post Danmark | 102 parcel locker stations in Denmark (2010).<br>300 new parcel locker stations planned by end of 2013. |
| Österreichische Post | 24 parcel locker stations in Vienna (2010). |
| PostNL | 3 parcel locker stations as test project started in 2012. |
| Swiss Post | Plan to install 40 parcel locker stations by the end of 2014. |

Source: WIK desk research.

**491** See Post & Parcel (2013), Tailoring parcel delivery to the modern lifestyle, 11 March 2013, http://postandparcel.info/54328/in-depth/tailoring-parcel-delivery-to-the-modern-lifestyle/.

The usage of parcel lockers provide another way to provide B2C services without extensive investment requirements (in case of the InPost model). Similar to the 'shop-in-shop' pick-up points parcel operators can limit their costs for the last mile, e.g. the costs related to missed delivery attempts or additional vehicles or employees for home delivery. Hence, parcel and express operators with focus on B2B shipments can expand their services to the B2C segment (see Case study 3-21). Furthermore, the usage of parcel lockers offers the opportunity for an inexpensive market entry and the utilization of the capacity by providing access to the parcel lockers to competitors and by outsourcing the logistics partially to contracted partners (see Case study 3-22).

Case study 3-21 The business model of ByBox

ByBox is a British logistic company and electronic locker manufacturer and was founded in 2000. Initially ByBox cooperated with the French locker manufacturer Logibag, which was acquired by ByBox in 2005. The company manufactured and installed over 57,000 electronic lockers in over 20 countries, e.g. , luggage lockers on airports or just recently parcel lockers in Belgium on behalf of bpost. In 2003, ByBox bought the field support division of Hays plc, to have its own national distribution network including 1,000 drop box locations in the UK.[492] ByBox operates 1,500 parcel lockers in the UK, mainly located at shopping malls, petrol stations and local retailers, and carries out the transport from and to the parcel lockers.[493] Initially, ByBox provided only business-to-business early (pre-8am) delivery express and return services for field services, e.g. engineers and technicians. Recently, ByBox expanded into business-to-consumer services and partnered with distance sellers by providing them a convenient delivery and return channel.[494] Customers have to register at the ByBox website in order to use the service and might pay either per parcel received or a monthly or yearly fee including a specified number of deliveries during this period. The consumers get a unique delivery address from ByBox and parcels send to this address will be redirected to the nearest ByBox parcel locker.[495]

**492** See ByBox website, http://www.bybox.com/lockers/postal/ and http://www.bybox.com/company/history/.
**493** See CEP Research (2012), ByBox looks for new parcel locker locations to keep up with growing demand, 4 September 2012.
**494** See CEP Research (2012), ByBox gets fashionable with British online retailer JD Williams, 12 September 2012.
**495** See ByBox website http://my.bybox.com/.

Case study 3-22 Parcel lockers offered by InPost

InPost, a subsidiary of Integer.pl, is one of Poland's biggest private sector postal operator providing letter, parcel, and express services in 300 Polish cities through a network of 1,000 offices.[496] In 2010, InPost invested EUR 40m in a nationwide parcel delivery network based on automated parcel lockers.[497] InPost operates more than 650 parcel lockers in Poland[498] and 3,400 parcel lockers worldwide in 2012 and aims to expand its network to 16,000 parcel lockers in Europe by 2016.[499]

In Poland, InPost provides 24-48 hour domestic parcel services and delivers around 10,000 parcels per day to its EasyPack parcel lockers. In other European countries, e.g. in Russia and Estonia, a carrier-neutral system is used. Courier companies deliver the parcels to nearby hubs of a contractually bound third-party delivery firm which the transport to and from the parcel lockers is organised.[500] In 2013, InPost expanded its activities to the UK planning to provide 2,000 parcel locker by the end of this year. In contrast to other European countries, InPost does not only partner with a single parcel carriers, who manage and deliver to the parcel lockers, but allows multiple delivery carriers to deposit their shipments directly in the lockers for a charge of approximately GBP 2 per parcel. With this approach, InPost offers alternative parcel carriers an additional delivery point and promotes the use of its parcel lockers. Moreover, InPost also aims at signing contracts with e-retailers to provide end-to-end parcel delivery services.[501]

*Reliable and convenient return channels*

The increase of parcel volumes based on distance selling and e-commerce yields the necessity to provide reliable C2B return channels. example, approximately 22 percent of the e-commerce related B2C volume in the UK is based on returns.[502] The provision is not only important with respect to recipients but more important to attract e-retailers as customers. While the provision of return channels is probably less problematic in the context of domestic mailings, this issue is especially important in the context of cross-border purchases, where 14 percent of all customers are unsatisfied with returns and only around 60 percent are satisfied with cross-border return handling.[503] The roll-out of collection points and provision of parcel lockers is one strategy observable in the European parcel and express markets pursued by the integrators DHL and UPS as well as by the European ground networks DPD and GLS. The Another strategy observable are cooperation between the national postal operators and operators with regional

**496** See InPost website, http://www.inpost.pl/en/about/company-info.html.
**497** See CEP Research (2010), Polish operator InPost invests €40m in B2C parcels business, 24 March 2010.
**498** E-Mail response InPost, 4. June 2013.
**499** See Post & Parcel (2013), Integer.pl doubles profits as global expansion plans accelerate, 4 March 2013, http://postandparcel.info/54222/news/companies/integer-pl-doubles-profits-as-global-expansion-plans-accelerate/.
**500** CEP Research (2012), UK and Ireland 'ripe' for parcel consolidation terminals, 14 June 2012.
**501** See Post & Parcel (2013), InPost arrives in UK, plans to install 2,000 parcel terminals in 2013, 8 February 2013, http://postandparcel.info/53738/news/companies/inpost-arrives-in-uk-plans-to-install-2000-parcel-terminals-in-2013/.
**502** See CEP Research (2013), Online shopping to generate 70% increase in e-parcel volumes, 7. Mai 2013.
**503** See CEP Research (2013), European cross-border e-retail set to grow by almost 40 percent this year, 13. March 2013.

scale, e.g. Hermes with TNT or Austrian Post.[504] Alternatively, the national postal operators might use the Easy Return Solution of the IPC (see Case study 3-16) which allows e-retailers to provide returns from the post offices of 21 European postal operators.

Case study 3-23 Cross-border parcel services: Easy Return Services (ERS)

The International Post Corporation (IPC)'s 'Easy Return Solution' (ERS) provides a priority postage paid return service for cross-border e-commerce shipments for national postal operators. The service started in 2010 with five European operators and was adapted by 21 operators in February 2013. The system uses a double-barcode label, one for the accepting or despatching postal operator and one for the authorising post receiving the returned parcel. The provision of the labels is organized by the IPC: the labels are electronically generated and provided to the authorising post, which make them available to the e-retailers. Consumers get the return labels from the e-retailers and might just drop of their returns at the domestic postal operator's collecting points without any further costs.[505]

The ERS uses some features of the E-Parcel Group (EPG), a cooperation of 29 postal operators from Europe, Northern America, and the Asian Pacific region. Beside the usage of the EPG's barcode system, the ERS uses the EPG's performance-based settlement and invoice system, its track-and-trace system, and an automated customer service system linking each postal operator's call centres.[506] Similar to the EPG, the ERS service might only be provided for parcels originating from the members' country.

**504** See CEP Research (2013), Hermes and TNT Post team up for combined mail and parcel delivery in Germany, 12. February 2013; Austrian Post, Annual Report 2012.
**505** See IPC (2013), E-Commerce Flash, Issue 2, 1 March 2013, p. 9.
**506** See IPC Annual Report (2011).

## 3.4 Employment in the postal sector

### 3.4.1 Development of postal employment since 2010

Employment in the postal sector is influenced by economic developments of postal markets, the regulatory framework as well as technological developments. First, the key economic development of letter markets is decreasing demand for postal services due to changing patterns of communication and electronic substitution of physical letters. Consequently, decreasing letter mail volumes and revenues have had an negative impact on postal service providers' employment in the past. Second, postal market liberalisation creates a variety of challenges for operators in the market (or entering the market), enables new business models, extends the provision of several products and services and impacts the employment of incumbent and new postal operators in different ways. Third, enhanced automation of sorting procedures and efficiency improvements have become available with technological progress (most importantly: improvements in optical character reading), and automation was pushed by a more commercial orientation of USPs, sector liberalisation and customers' increasing quality expectations. Overall, the letters business, the traditional postal core business, has witnessed a slight reduction in the number of jobs in the last decade.[507]

The employment situation of incumbent postal operators is characterised by comprehensive re-organisation due to efficiency enhancement, quality improvement and cost-optimisation programmes. In addition, measures to reduce delivery costs on the last mile and outsourcing of postal activities have a strong impact on employment. By contrast, some USPs diversify their business activities into new (logistics and financial) markets and (electronic) services and benefit from strong increases in parcel volumes, which leads to additional employment.

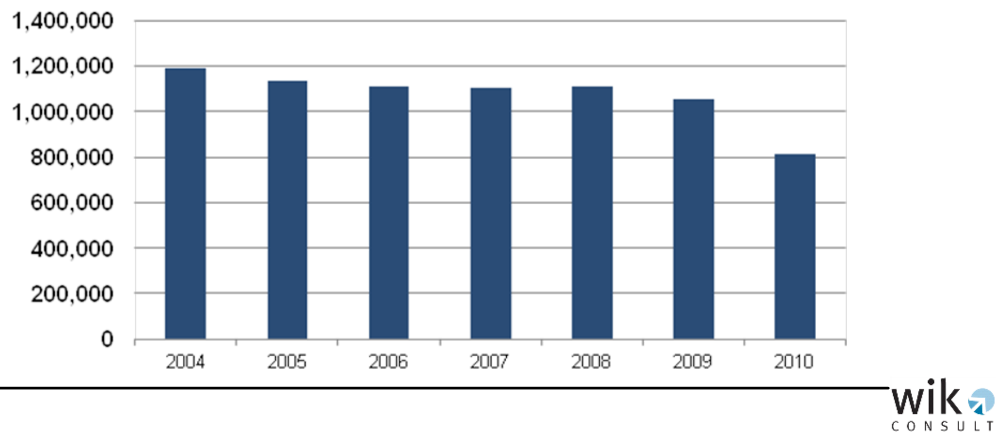
Overall, employment in the postal sector has become more manifold than it was traditionally. As of 2013, additional players with a wider range of business models offer employment opportunities in the postal sector. Apart from employment at USPs, competitive delivery operators and consolidators have created new jobs in letter post and parcel markets. Additionally, companies supplying upstream services to postal services like printing, mail preparation, management of inhouse postal departments or return services for business customers offer new employment opportunities. Sub-contractors supplying transport services as well as shop owners serving as postal agents have also supplemented the postal workforce.

The variety and plurality of employment opportunities is difficult to quantify (and could not be quantified for this study) for several reasons: First, there is no clear and generally accepted definition of the sector since postal services are nowadays also provided by a

**507** No precise data is available for our reporting period, 2010.2013. From Eurostat, for example, the latest years for which data was available when this report war drafted related to 2010.

number of operators from other sectors. Second, it is barely possible to obtain reliable employment data for many sub-segments of the postal sector. A reliable quantification of negative and positive impacts on development of employment in the postal sector is thus hardly feasible In sum, it is unclear, to what extent the positive impact of diversification, increasing parcel volumes and new business models offsets (or exceeds) reductions in employment in the traditional letter business, or will do so in the future.

Figure 3-42 Postal sector employments in EU-27 according to Eurostat (headcount), 2004-2010



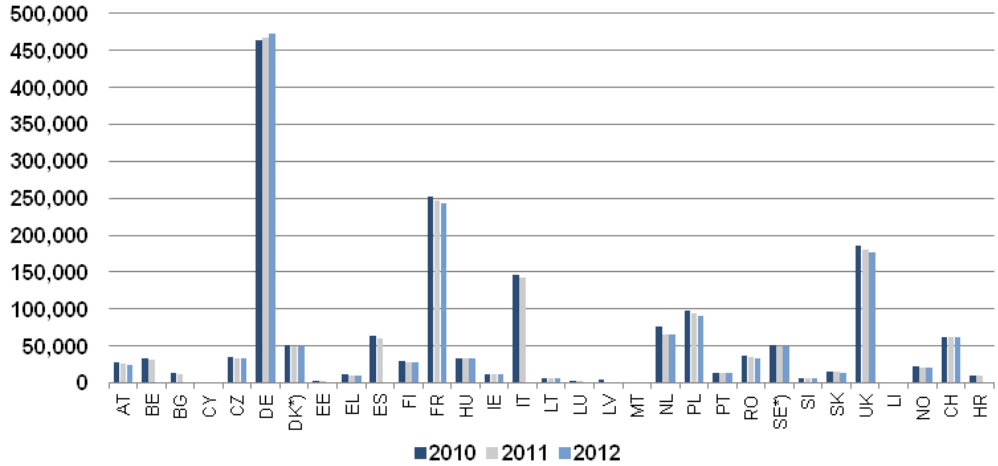

Source: Eurostat: Persons employed for the provision of postal and related services domestically.

According to data provided by Eurostat, domestic employment in the postal sector in the EU-27 has declined by about one third from 1.19 million to 815,000 jobs between 2004 and 2010 (see Figure 3-42). It is unclear what exactly is included in the data reported by Eurostat, and to what extent it includes employment in private operators in addition to USP employment. Comparing Eurostat data to our survey, we note that employment reported by Eurostat is lower than the data we collected for USPs alone. While we did not have accurate data for employment in competitive parcel carriers and letter operators, and therefore cannot present an estimate for total employment in the postal sector, we are convinced that total direct employment in the postal sector according to our definition (letters, parcels, and express services provided by USPs and private operators) is substantially higher than the data reported by Eurostat.

Figure 3-43 shows the employment of incumbent postal operators in EU Member States, EEA-countries as well as Switzerland from 2010 to 2012. Based on our survey, there were 1.68 million people employed at universal postal service providers in the 32 survey countries in 2011. Yet, it has to be taken into account that these figures also include employees in foreign markets as well as of subsidiaries in non-postal business

segments.[508] The four largest USPs (of DE, FR, IT and UK) employ about two thirds of all employees in the survey countries.

Figure 3-43 Employees of USPs, 2010 – 2012 (total headcount)



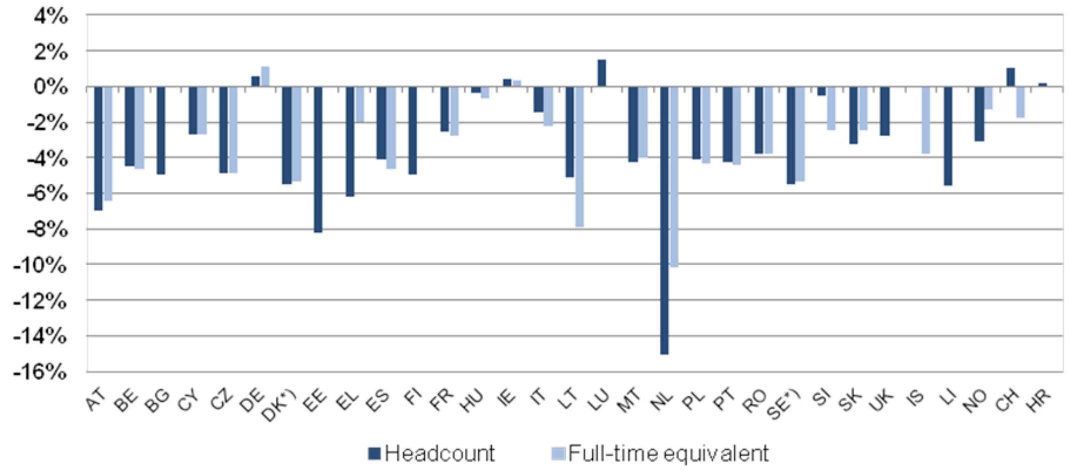

Source: WIK Survey; USP annual reports.
No data available for Iceland; *)Data for PostNord includes DK and SE

Employment of postal incumbents in the EU Member States has been reduced by 2.5 per cent (about 43,000 jobs) between 2010 and 2011. However, there are significant differences among the analysed countries(see Figure 3-44). While there are hardly any changes in some countries, in others employment has sunk significantly both in terms of headcounts and full-time equivalents. In most survey countries, the number of jobs in 2011 has decreased compared to 2010 by between 2 and 6 per cent. Very noticeable changes occurred in NL, the strong reduction of employment figures being essentially the result of PostNL's decision to sell several international affiliated companies and subsidiaries, especially in Eastern Europe. In most countries, employment reductions of USPs are a consequence of restructuring measures. Eesti Post serves as an example for significant employment reductions. In its annual report, the company writes ‘this happened because of the drop in the volume of work and the reorganisation of working practices following the fall in the main business revenues generated by the company as the consumption of postal services fell’.[509]

**508** Employment data for DE comprises all employees of the corporate group Deutsche Post DHL. The mother company Deutsche Post employed 169,901 people in 2012 (2011: 171,208).

**509** Eesti Post, Yearbook 2011, p. 31.

Figure 3-44 Development of USP total employment 2010/2011 (headcount and full-time equivalent)




Source: WIK survey, USP annual reports.
No data available for LV; CH: 2010/2012; *)Data of PostNord includes DK and SE

In light of sinking demand for physical letter mail services, many postal service providers have developed innovative products for electronic communication or financial services. The strong growth of e-commerce, leading to increased parcel revenues, enables some postal operators to compensate for their decreasing mail business and therefore to stabilise employment.

Alternative postal operators record a stable or increasing number of jobs. In letter post markets, however, positive employment trends at competitive operators apply only to those countries where liberalization has led to end-to-end competition. Competitive postal operators significantly contribute to employment in the postal sector normally only if they enter into end-to-end competition and build up own delivery networks. Mere consolidation services comprising collection and sorting of postal items contribute relatively little to employment since labour-intensive delivery remains at the incumbent. Countries with noticeable end-to-end-competition are DE, ES, HR, NL and SE. Yet, there are only few data on employment of competitive postal operators in these countries.

In Germany, where the regulator publishes official data on employment development competitors' jobs increased from 16,422 FTE in 2008 to 16,776 FTE in 2010 but in 2011 was reduced slightly below to the level of 2008 due to loss of market share and mergers among competitive postal operators in Germany.[510]

**510** Bundesnetzagentur (2013), Annual Report 2012, p. 112.

In Sweden, the strongest competitors of the incumbent postal operator, Bring CityMail, was able to enhance the number of jobs due to regional expansion of its delivery activities from 1,062 FTE to 1,740 FTE between 2005 and 2012.[511]

In Spain, alternative and-to-end operators employs approximately 4,500 persons in 2011, up from 3,800 in 2005. Additional 6,000 persons were employed at consolidators offering postal services in Spain in 2011. Employment at alternative operators, and total sector employment in Spain had peaked in 2008, but all operators, including the USP Correos and the largest competitors Unipost has gradually reduced employment as postal volumes declined since the financial crisis in 2008.[512]

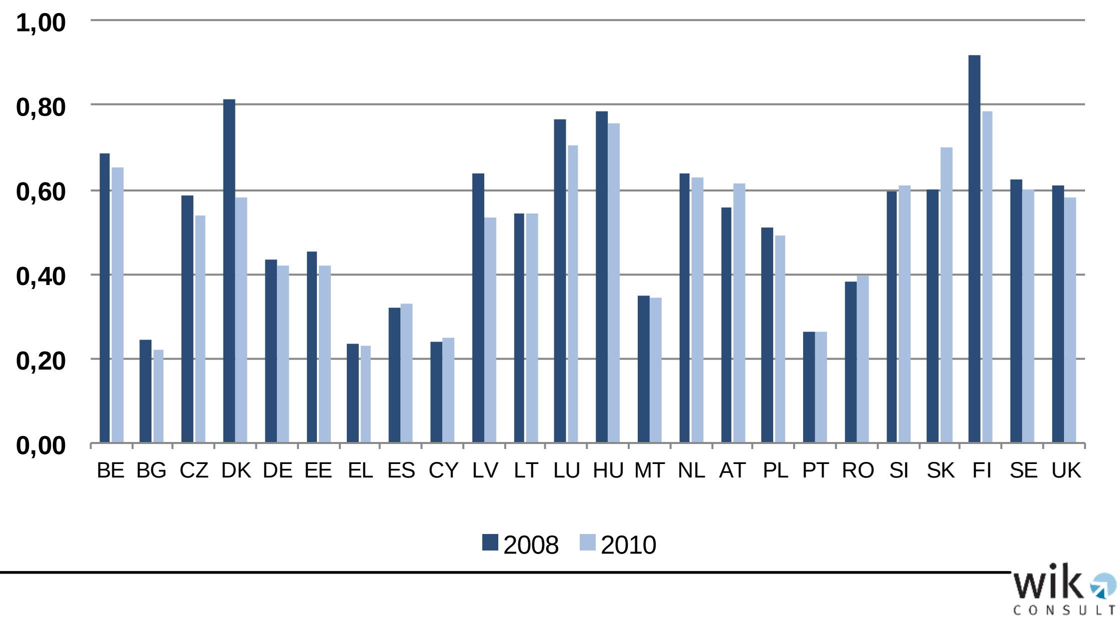
In interviews conducted for this study, business partners of postal operators as well as representatives of trade unions reported a rather low significance of competitive postal operators for employment developments in the European postal market due to the low level of competition in most Member States. In countries with end-to-end-competition, however, the share of new entrants in sector employment corresponds approximately to their market share.

In many Member States, e-commerce has experiences strong growth during the last years. Demand for parcel delivery services has increased to the benefit of employment in the parcel and express market. According to a recent study on the courier, express and parcel market in Germany, the number of jobs at parcel and express services has increased from 160,000 to about 191,000 between 2002 and 2012. This corresponds to an annual increase of about 2 percent.[513] A study on the European express market states similar increases. Jobs in this market segment have increased from 240,000 to 272,000 in EU Member States between 2003 and 2010. The study estimates positive employment trends for the future: the authors expect an increasing employment by a further 10 percent to 300,000 jobs at European express service providers until 2020.[514]

---

**511** Bring CityMail.
**512** CNSP: Estudio de mercado del sector postal en España en el año 2011. Informe Ejecutivo. 1 April 2013.
**513** Bundesverband Internationaler Express- und Kurierdienste (BIEK): KEP-Studie 2013, p. 21.
**514** Oxford Economics / European Express Association: The Economic Impact of Express Carriers in Europe.

Figure 3-45 Share of USP domestic employment in % of total employment in EU Member States, 2010




Source: Eurostat; No data available for IE, FR, IT

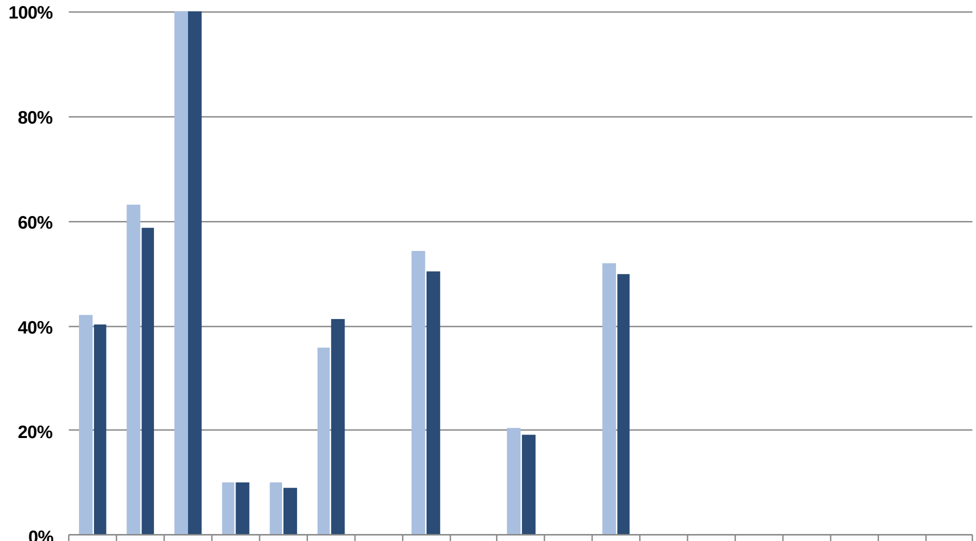
Traditionally, incumbent postal operators were among the biggest employers in their home countries. In some survey countries, postal employees have a relevant share in total employment. Countries with the highest share of postal in total employment are Finland (0.8 per cent) and BG, EL, CY and PT with a share between 0.2 and 0.3 per cent. Differences in USPs' relative importance in domestic labour markets results primarily from the different product portfolios of the USPs and from differences in efficiency as well. Operators that offer many non-postal services (e.g. logistics and financial services), naturally need more employees than operators that only offer a basic set of postal services.

*Structure of USP employment*[515]

Before postal reform, universal service providers were postal administrations with a high share of civil servants who benefitted from special wages and rights. In the course of transforming to privately-owned operators in a number of countries, civil servants have either resigned, given up their status or have been employed as civil servants in corporatised, or privatised, postal companies under different legal conditions. However, the employment of civil servants is phasing out and the number of civil servants is declining.

**515** The analysis of the structure of employment in the postal market is based on USP employment data only since reliable data on competitors' employment structure do not exist.

Figure 3-46 Share of civil servants at USPs (headcount), 2010/2012



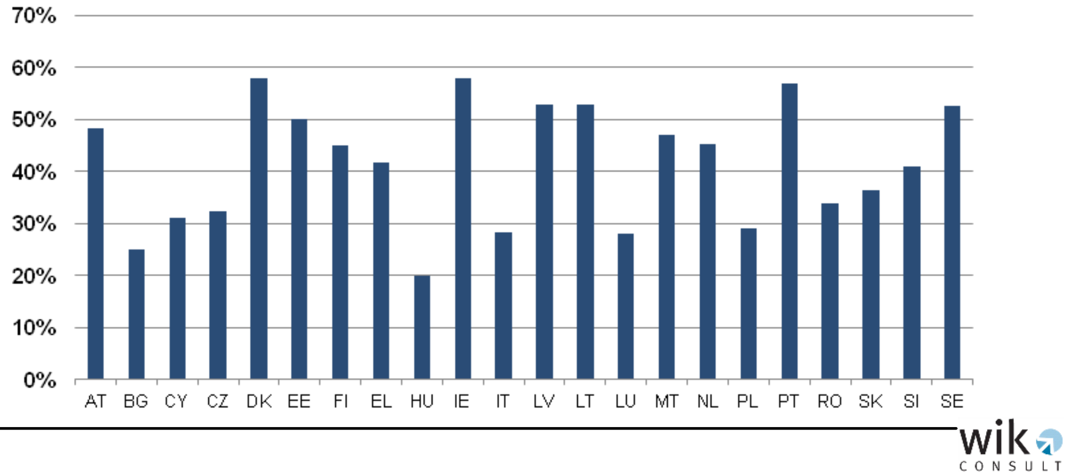

| | AT | BE | CY | CZ | DE | ES | FI | FR | HU | IE | LT | LU | MT | NL | PL | PT | RO | SK | NO |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2010 | 42% | 63% | 100% | 10% | 10% | 36% | 0% | 54% | 0% | 21% | 0% | 52% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| 2012 | 40% | 59% | 100% | 10% | 9% | 41% | 0% | 50% | 0% | 19% | 0% | 50% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |

Source: WIK survey, USP annual reports.
No data available for BG, DK, EE, EL, IT, LV, SE, SI, UK, IS, LI, CH, HR; Data 2011: BE, ES, IE, LU;

As Figure 3-46 shows only few USPs still employ civil servants. Their share varies between 100 % at Cyprus Post (which still is a state-owned administration) and 10 % at Czech Post and Deutsche Post.[516] The share of civil servants is relatively high in BE, FR, LU, AT and ES. With exception of the Spanish USP the share of civil servants at all USPs has decreased between 2010 and 2012.

**516** Figures for DE refer to Deutsche Post Group. The share of civil servants employed at the parent company Deutsche Post AG was 25% in 2012.

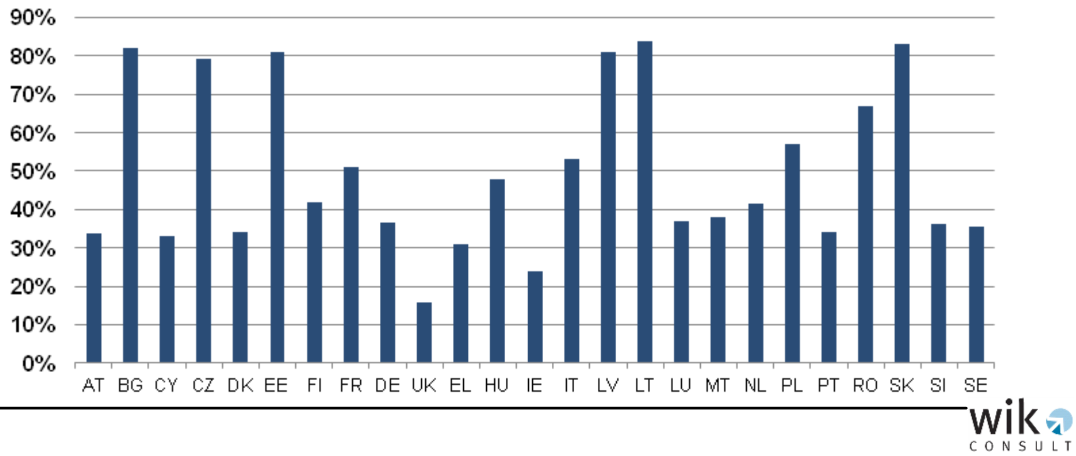
Figure 3-47 Share of delivery staff at USP employees, 2011 (headcount, EU-27)




Source: Universal Postal Union; No data available for BE, FR, DE, UK, ES

Figure 3-47 shows the share of delivery staff in total staff of the USPs. Since delivery is the most labour-intensive activity of the postal value chain, more than half of total USP staff is active in delivery in DK, IE, LV, LT, PT and SE. This share is much lower in BG, HU, IT, LU and PL where less than 30% of all employees are delivery staff. The share of staff active in delivery depends on the one hand on organisational issues: if a USP has reduced its total staff by outsourcing of activities of the postal value chain or by organising access points as agencies in shops the share of delivery staff in the company will rise. If, on the other hand, USPs have substantial business in other segments (e.g. financial services in IT), the share of delivery staff will decrease.

Figure 3-48 Share of female employees at USPs, 2011 (headcount, EU-27)



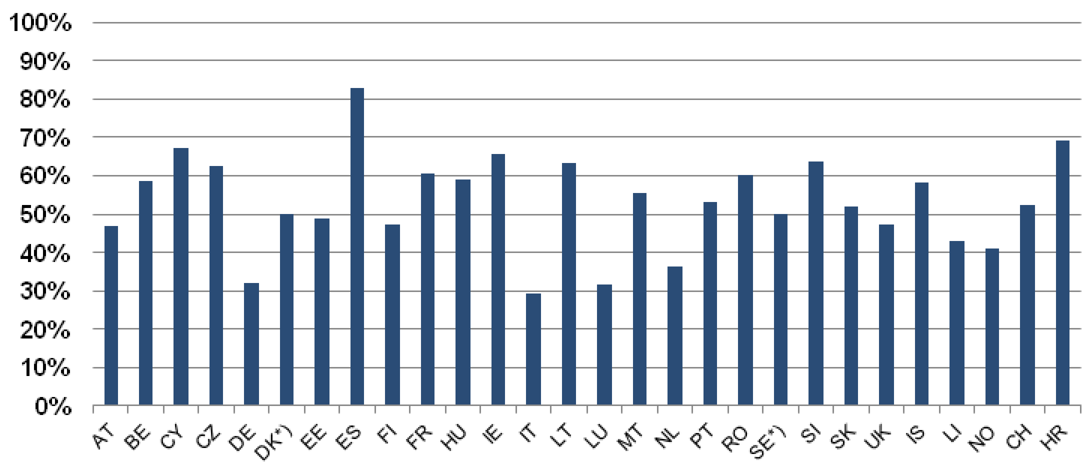

Source: Universal Postal Union; No data available for BE, ES; UK: 2010

There are significant differences in USPs‘ employment structure regarding the share of female employees. Traditionally, the USPs in the Central and Eastern European countries employ more women than USPs in Western Europe. The share of female employees is well above 50 % in these countries, with only few exceptions (HU, SI). UK and IE have the lowest share of female employees. Gender aspects have not been a major element in public debates on the development of employment in the postal sector to date.

### 3.4.2 Labour cost and productivity

As Figure 3-49 shows, labour costs amount to more than half of total costs at the majority of USPs in the survey countries. The share of labour costs is especially high in ES, followed by HR, CY, CZ, IE, LT and SI where this share is above 60 %. The share of labour on total costs is lowest in DE, IT, LU and NL with less than 40 %. USPs in these last countries however also provide logistics, telecommunication or financial services whose labour-intensity is lower than those of traditional postal services. Since labour costs are mostly fixed costs, USPs with a higher share of labour costs are also characterized by a high share of fixed costs. Against this background, necessary adaptions to a changing market environment, especially volume declines, create a challenge to postal operators. This relation is the main reason for postal operators' efforts to increase flexibility of labour costs which often have a direct impact on employees.

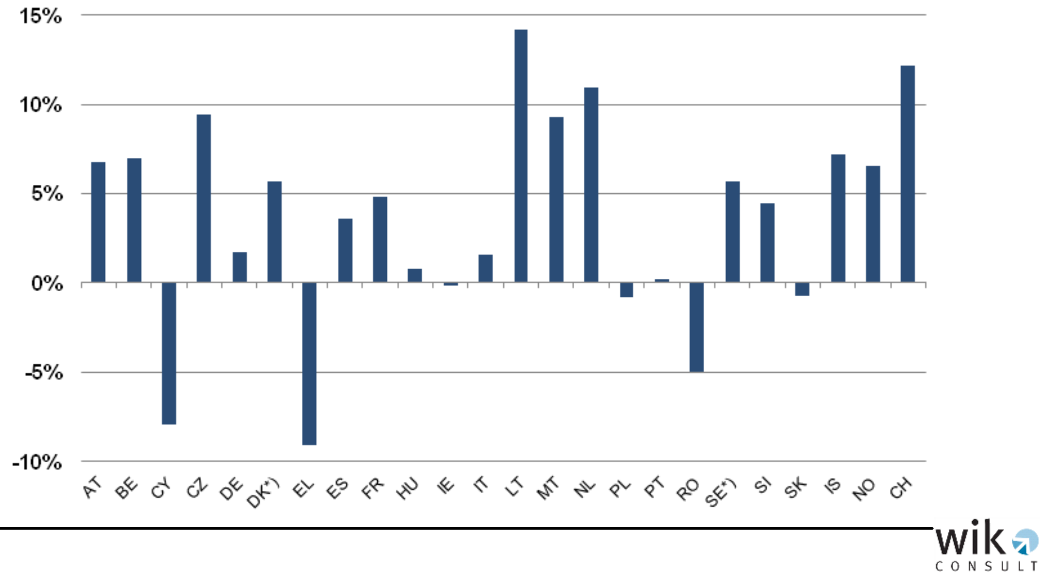
Figure 3-49 Share of USP personnel expenses in total operating expenses, 2011




Source: WIK Survey; USP annual reports.
No data available for BG, EL, LV, PL; *)Data of PostNord incl. DK and SE

Productivity indicators measure output in relation to input production factors. The most important input factor in postal markets are employees. Output can be measured in terms of volume per input factor (e.g. letters per FTE) or returns (e.g. revenue per FTE). In the following, productivity indicators are expressed as revenue per FTE.[517] USPs have different productivity due to several reasons: in addition to differences in performance the national price levels and differences in the product portfolio are crucial.

Figure 3-50 Development of USP productivity (revenue per FTE), 2010/2011




Source: WIK Survey; USP annual reports.
No data available for BG, EE, FI, LU, LV, UK, LI, HR; *)Data of PostNord incl. DK and SE

Since postal revenues are in decline in most Member States, productivity increases may only be realized by rationalization programs, i.e. reductions of input factor labour. Figure 3-50 shows on the basis of changes of productivity from 2010 to 2011 that productivity has increased especially in those countries where have substantially reduced staff. This is the case in NL, LT and AT but also in BE, CZ, DK and SE. In RO but also in CY and EL whose USPs are suffering from difficult economic market environments due to the Eurozone crisis productivity has significantly decreased as revenue plunged from 2010 to 2011.

**517** Employment figures provided by USP generally relate to more than just the letter mail segment. Therefore, productivity in terms of letters per FTE is impossible to measure.

### 3.4.3 Evolution of labour conditions

#### 3.4.3.1 Increased flexibility of employment contracts

Postal operators aim at increasing flexibility of employment contracts in order to adapt employment to changing volumes and consumer needs. In addition to that, more flexible employment contracts may reduce labour costs which helps to balance declining (mail) revenues and improve operator's competitiveness. This trend has been confirmed by many interviewees of postal service providers and trade unions. Literature also provides information on increased flexibility of employment contracts in the postal sector. An empirical study on the impact of liberalization and privatization in different sectors in selected EU Member States comes to the conclusion

> 'Not only were employment levels reduced, but also the contractual forms changed, with a marked increase of part-time and fixed-term jobs and other forms of atypical employment. The shift in employment to newly established competitors accelerated this development. While postal companies in most countries have increased the number of part-time workers, other forms of atypical employment, such as marginal or self-employment, are country-specific. However, if not prevented by labour regulations, the new competitors tend to rely particularly heavily on non-standard forms of employment.'[518]

How flexible and 'atypical' forms of employment should be assessed from a socio-political point of view largely depends on whether they result in additional jobs, or substitute existing 'standard' employment contracts. Furthermore, the evaluation of the atypical employment depends on the nature of non-standard-employment. Certainly, jobs with very little income security and social protection may raise concerns from a public policy perspective. There may however be employment contracts deliberately chosen by employees due to their flexible nature, e.g. because part-time employment facilitates to harmonise family and professional life.[519]

Our survey confirmed a continuing trend to increase flexibility of employment contracts. However, the extent and the type of flexible employment differs from country to country. Several scientific studies have recently confirmed heterogeneous development of flexible employment in EU Member States. Which kinds of contracts and the extent to which flexible employment contracts are applied is determined largely by demand for

---

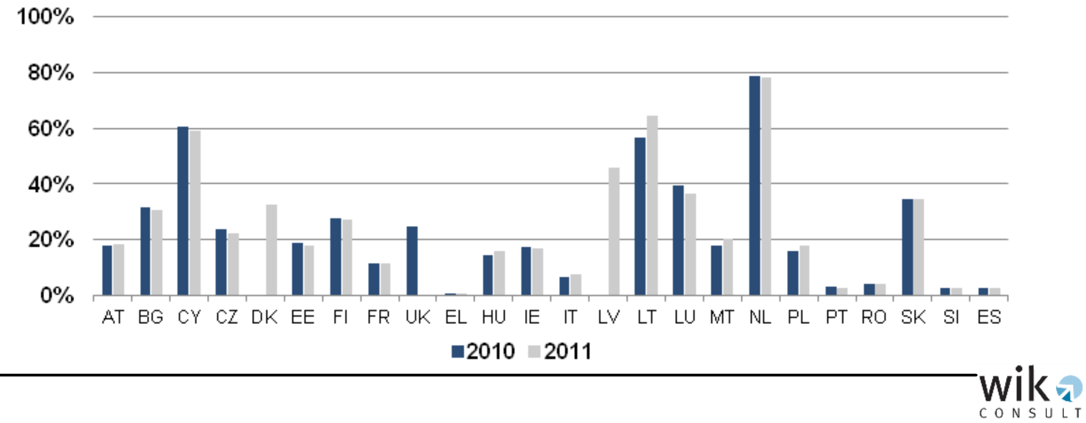
**518** PIQUE: Privatisation of Public Services and the Impact on Quality, Employment and Productivity (PIQUE), Summary Report, 2009, p. 26.

**519** Schmeißer, Claudia et al.: Atypische Beschäftigung in Europa 1996 – 2009, WZB-DiscussionPaper - 2012001, Berlin, Juni 2012, p. 12.

such employment contracts but also by social and labour legislation in the respective countries.[520]

### 3.4.3.2 Working conditions at USPs

Figure 3-51 Share of part-time employment at USPs (headcount, EU-27)




Source: WIK Survey; USP annual reports.
No data available for BE, DE, SE

Part-time employment, as one of the most commonly used measures to increase flexibility of labour costs, is applied by USPs to a different extent in the survey countries. For some USPs like PostNL, part-time employees are an essential part of its restructuring strategy in order to react more flexible to changes of mail volumes. In CY, where the USP employs a relatively high share of its staff as part-time employees, the majority of part-time staff are women.[521] With the exception of CY, LV, LT and NL, the share of part-time employees is below 40 % and even less at most USPs. The average share of part-time employees of 19 % largely remained stable since 2002.[522]

**520** There are great differences as regards development and distribution of atypical employment in the EU Member States during the last years (cf. Schmid, Günther: Non-Standard Employment and Labour Force Participation: A Comparative View of the Recent Development in Europe, IZA – Institute for the Study of Labour, Discussion Paper No. 5087, Bonn, Juli 2010). Whereas part-time employment is the dominant form of atypical employment in continental European countries like Austria, Germany, the Netherlands, France, UK as well as the Nordic countries, temporary employment contracts are relatively wide-spreas in Spain, Portugal, Poland, and Slovenia. In Romania, Greece or Czech Republic, single self-employed jobs are the dominant form of flexible employment, cf. Schmeißer, Claudia et al.: Atypische Beschäftigung in Europa 1996 – 2009, WZB-DiscussionPaper -2012001, Berlin, Juni 2012.

**521** C.f. Ecorys: Main developments in the postal sector (2006-2008), Final report, 2008, p. 215.

**522** Compare our survey results to Ecorys: Main developments in the postal sector (2006-2008), Final report, 2008, p. 215.

Table 3-14 Role of flexible employment relationships at USPs

| Country | Share of temporary staff | Share of temporary agency workers | Contracts not subject to social insurance contribution | Self-employed staff |
|---|---|---|---|---|
| AT | 3%* | - | - | - |
| CY | 0% | 0% | 0% | - |
| CZ | 13%* | 0% | 0% | 0% |
| EE | 21%* | - | - | - |
| EL | 18% | 10% | | - |
| ES | 19% | 0% | 0% | 0% |
| FI | 12%+ | 11% | 0% | 0% |
| FR | 6% | - | | - |
| HU | 7%* | | | |
| IE | 14% | 0% | 5.3% | 0% |
| IT | - | 0.1% | 0% | 0% |
| LT | 12% | 0% | 0% | 0% |
| MT | 32%* | 8% | 0% | 0% |
| NL | 5%* | 11% | 0% | - |
| PL | 14%* | 0% | 0% | 0% |
| PT | 9%* | - | 0% | - |
| RO | 3% | 0% | 49% | 0% |
| SI | 5% | 6.3% | 0% | 0% |
| SK | 2% | 0% | 0% | 0% |
| UK | 5%* | | | |
| NO | - | - | 0% | - |

Source: WIK-Survey; * Data from: European Social Dialogue Committee of the Postal Sector: Project 'Social partners preparing for change'. Second step of the Social Observatory, Grant Agreement 2010/2011, VS/2010/0385, p. 28; No data available for BE, BG, DE, DK, LU, LV, IS, LI, CH, HR

Table 3-14 provides an overview on the application of employment contracts with increased flexibility at USPs in the survey countries. Most USPs use fixed-term employment contracts. This kind of contracts increases flexibility for the providers on the one hand, on the other hand this means uncertainty for employees. According to our survey results, the share of employees with fixed-term contracts is significant in EE and MT (more than 20 %) but also in EL, ES, FI, IE, LT and PL where the share is above 10 %.

Temporary agency work plays an increasing role in many countries and sectors. Yet in the postal sector there are only few jobs concerned with temporary agency work. According to our survey, the share of employees with temporary agency contracts is relevant in EL, FI, MT, NL and SI.

Temporary jobs or jobs with only few weekly working hours are mostly subject to contracts without social security contributions and without tax obligations ('marginal employment'). For employees, this means low social security as they do not contribute to social security systems like health and unemployment insurance as well as pension

funds. Our survey showed that contracts not subject to social security contributions are only rarely applied at USPs in the survey countries. However, according to information of Romanian Post, 49% of its employees fall in this category. Likewise, self-employed staff is not common at USPs. An exception are shop-owners providing postal services as agents for USPs in many countries.

Summing up, atypical employment contracts at USPs form only a rather small part of all staff. However, USPs apply measures to increase flexibility of labour costs to different degrees. According to our information, a commonly used measure is to lower the starting salary for new staff (up to 30% lower than those of permanent staff). In addition, USPs outsource activities or establish subsidiaries where the level of working conditions is lower than at the holding company.

Table 3-15 Monthly wages paid by USPs compared to sector 'transportation and storage' and national minimum wages

| Country | USP's average wage | Average wage 'Industry & Service' (2010-2011) | Average wage 'Transporta-tion and storage' (2010-2011) | National minimum wage (2011) | USP's average wage as share of … | | |
|---|---|---|---|---|---|---|---|
| | | | | | Average wage 'Industry & Service' | Average wage 'Transporta-tion and storage' | Natinonal minimum wage |
| | *(1)* | *(2)* | *(3)* | *(4)* | *(1) / (2)* | *(1) / (3)* | *(1) / (4)* |
| CZ | 856 € | - | 951 € | 329 € | - | 90% | 261% |
| EE | 540 € | - | 832 € | 278 € | - | 65% | 194% |
| FR | 2,279 € | 2,905 € | - | 1,365 € | 78% | - | 167% |
| HU | 673 € | 822 € | - | 293 € | 82% | - | 230% |
| IE | 3,000 € | 3,842 € | 3,360 € | 1,462 € | 78% | 89% | 205% |
| IT | 2,233 € | - | 2,309 € | - | - | 97% | - |
| LT | 411 € | - | 714 € | 282 € | - | 58% | 146% |
| NL | 2,700 € | 3,816 € | 3,453 € | 1,435 € | 71% | 78% | 188% |
| PL | 761 € | - | 739 € | 347 € | - | 103% | 219% |
| RO | 384 € | 489 € | 512 € | 158 € | 78% | 75% | 243% |
| SI | 1,530 € | - | 1,460 € | 748 € | - | 105% | 205% |
| SK | 638 € | 899 € | 796 € | 317 € | 71% | 80% | 201% |
| NO | 4,501 € | - | 4,758 € | - | - | 95% | - |

Source: WIK survey (average wage USP), Eurostat (average wage 'Industry & Service Sector'; average wage 'Transportation and Storage')
No data available for AT, BE, BG, CY, DE, DK, EL, ES, FI, LU, LV, MT, PT, UK, LI, CH, HR

Wages are an essential part of working conditions. In an analysis of employment conditions in the postal sector of several EU Member States, Copenhagen Economics assumes market liberalization will put pressure on the level of wages incumbent postal operators are willing to pay, as far as their wage levels are higher than those paid for comparable jobs in the sector. This assumption implies that incumbent postal operators,

under monopoly market conditions, were willing to pay premium wages above the market level.[523]

In the course of our survey we compared the level of USP gross wages with national average wages. For the purpose of assessing whether incumbent postal service providers pay premium wages, we compared USP wages with average wages in the sector 'transportation and storage' which is statistically on a higher level than the postal sector.[524] Additionally, we have compared average USP wages per country with national wage floors in order to analyse in how far USP wages differ from national minimum requirements (see Table 3-15).

Average wages of USPs are about 20 to 30 % lower than national average wages. Similarly, postal incumbents pay lower wages compared to the sector 'transportation and storage'. However, the gap is small, and in PL and SI USPs pay even slightly more than the average wage in 'transportation and storage'. Based on this data, it is difficult to assess the wage premiums paid by USPs. USPs apparently pay less than total averages in the labour market, but more than required by national wage floors. However, a substantial part of postal labour requires not or little formal skills, so that the share of unskilled work (with lower-pay) is likely higher for postal operators than for the overall economy.[525]

#### 3.4.3.3 Working conditions at competitors

Competitors in the postal market offer working conditions that differ from those of the USPs in many respects. New market entrants often compete by price, and have more uncertainty about the volumes they deliver. Since they cannot quickly reach substantial economies of scale, competitors have to be more cost-efficient, and more flexible than the USP, especially as regards labour costs which accounts for the majority of their total cost. Business models of many end-to-end-competitors thus include flexible, atypical employment contracts.[526] Empirical evidence in the postal sector shows that this price competition has a negative effect on wages.[527] This lead to political discussions on

**523** Copenhagen Economics: Wages and Employment Conditions in Liberalised Postal Markets. Report for the Norwegian Ministry of Transport and Communications, 2010.

**524** The section H - 'transportation and storage' of the statistical classification of economic activity is mainly structured according to the different modes of transport, and contains five different divisions, as follows: land transport by rail, road and pipeline (Division 49); sea and coastal water transport and inland water transport of freight and passengers (Division 50); passenger air transport, as well as freight air transport and space transport (Division 51); warehousing and support activities for transportation (Division 52); postal and courier activities (Division 53). According to Eurostat, 10 million people are employed in this sector.

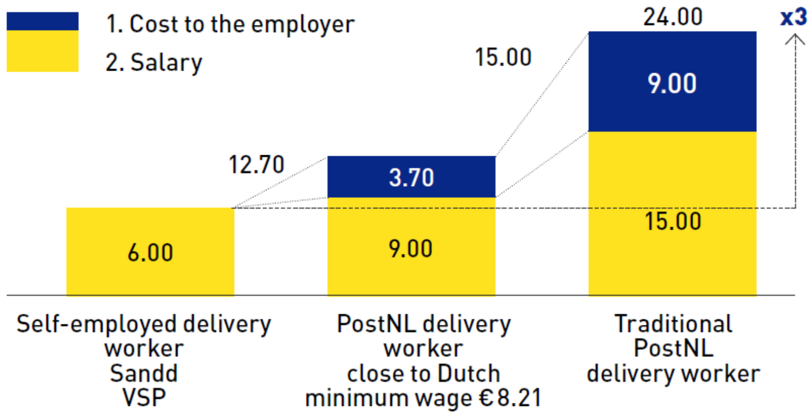
**525** Very few USP have reduced wage premiums by reducing salaries of existing staff. However, several USPs have reduced salaries for new contracts so that new USP employees in many Member States receive lower starting salary than their more senior colleagues. We therefore expect the gap between USP wage levels and national and sectoral average wages to increase in the next years; Older staff with higher wages retire, and the share of new staff with lower wages will increase.

**526** Cf. Ecorys: Main developments in the postal sector (2006-2008), Final report, 2008, p. 216.

**527** Cf. Input Consulting: Liberalisierung und Prekarisierung – Beschäftigungsbedingungen bei den neuen Briefdienstleistern in Deutschland, 2006; PIQUE: Privatisation of Public Services and the Impact on

social regulation of the postal sector, particularly in the adoption process of the Third Postal Directive.

Figure 3-52 Differences in wages between several postal operators in the Netherlands




Source: European Social Dialogue Committee of the Postal Sector (2011): Project 'Social partners preparing for change'. Second step of the Social Observatory, Grant Agreement 2010/2011, VS/2010/0385, p. 23

The overall situation as regards working conditions at competitive postal operators has, in essence, not changed much. Atypical employment contracts continue to play an important part for several new entrants, especially temporary and part-time employment, as well as low wages. Figure 3-52 illustrates wage differences for different groups of employees at the example of PostNL. Wages and working conditions were one major element of the public debate on new postal legislation in the Netherlands in 2012-2013.

On the cost side, wages of employees subject to labour agreements (traditional delivery worker at a USP) can be thrice as high as the cost of a self-employed agent receiving piece wages (typically employed at a competitive postal operators). Even labour costs of part-time employees at PostNL were more than twice as high as those of a self-employed worker at Dutch competitors. Self-employed delivery staff at Sandd in NL receives on average about 6 € per hour (based on piece wages). This is more than 25% less than required by the national wage floor in NL and about one third below the wage level of part-time employed delivery staff of PostNL. The gap between wages for self-employed delivery staff at Sandd and the traditional wage level of PostNL is even higher

Quality, Employment and Productivity (PIQUE), Summary Report, 2009; Copenhagen Economics: Wages and Employment Conditions in Liberalised Postal Markets. Report for the Norwegian Ministry of Transport and Communications, 2010; Heidinger, Bettina: On the move in Global Delivery Chains: Labour Relations and Working Conditions in the Parcel Delivery Industries of Austria, Germany, the Czech Republic and Hungary, SODIPER Synthesis Report, March 2012.

(60%). Until September 2013, the share of employees with regular contracts and wages at the national wage floor at competitors in NL has to increase to 80% (see Case study 3-29).

Due to the slow development of competition in letter post markets, difficult employment conditions are an issue mainly for some of some (but not all) countries where any end-to-end competition has evolved (DE, ES, NL). Sweden too belongs to the countries with relevant end-to-end-competition. However, a collective labour agreement for the whole postal sector in Sweden determines uniform working conditions for all postal service providers, and effectively ensures working conditions agreed for the sector by all social partners, including Bring CityMail. In other survey countries, difficult employment conditions barely exist because there are no competitive postal operators. However, atypical employment contracts are commonly spread at operators in the parcels market where there is increasing price competition and some parcel operators traditionally use subcontractors and self-employed delivery staff has given cause to controversial public debate (see Case study 3-24).

Case study 3-24 Self-employed workers in the parcel delivery in DE

In Germany, many competitors do not dispose of own delivery personnel but outsource delivery to business partners, in some cases outsource sorting activities, too. By means of these measures, parcel service providers increase their flexibility and transmit the entrepreneural risk for labour-intensive delivery to their subcontractors. Parcel delivery is often based on piece wages. In areas that are difficult to serve, therefore, returns from piece-rates are low. Subcontractors therefore are under significant cost pressure. At the same time, subcontractors are mostly not bound to labour agreements, and their employees are barely organized in unions. This leads to very low wages and difficult working conditions. In Germany, 'couriers at subcontracting entities on average earn 6 Euro per hour gross, facing very long working hours of up to 14 hours. Mini-, midi-jobs and fixed-term contracts are widespread in subcontractors' and service providers' employment arrangements.'[528] Depending on delivery volumes and piece wages ranging between 70 and 90 Eurocent per item, gross hourly wages for self-employed drivers can be less than 5 Euro. In Germany This wage level is not sufficient for maintaining subsistence, and does not leave room for further social security of self-employed staff. Hourly gross wages may be reduced further in case of low volumes or increasing costs for fuel. 'Without to argue that there is no possibility at all to earn sufficient as a self-employed courier, the situation is such that current compensation is in many cases inadequate. Financially, self-employed couriers are walking on a tight rope. Any unforeseen incident such as a downturn in volume, illness, care responsibilities, accidents or the need for investment in new material, i.e. cars can push couriers into bankruptcy. Quite often, self-employed couriers only become aware of their precarious situation with some delay, i.e. when tax and insurance are 'suddenly' due.'[529]

**528** Haidinger, Bettina: On the move in Global Delivery Chains: Labour Relations in the Parcel Delivery Industries of Austria, Germany, the Czech Republic and Hungary, SODIPER Synthesis Report, Work Package 6, March 2012, p. 29.

**529** Holst, Hajo / Singe, Ingo; Precariousness and Informality – Work and Employment in the German Parcel and Delivery Industry, Work Package 2, October 2011, p. 60.

According to our interview partners, large business senders in Germany pay as little as 2 Euro for parcels – this is about half the public tariff for single small parcels of Deutsche Post and its major competitor Hermes. This pressure is handed down to subcontractors, resulting in working conditions as described above.

In light of public criticism of working conditions in the German parcel market, some companies have established measures to improve their working conditions. In June 2012, Hermes Europe, a subsidiary of Germany's biggest distance-seller Otto, has introduced a code for 'intercourse with employees and business partners in parcel delivery'. This code stipulates minimum hourly wages of 8.50 Euro. Breaches of the codex or of legal requirements on working conditions will prosecuted and may lead to termination of contract with business partners.

In May 2013, DPD, a subsidiary of La Poste's international parcel provider GeoPost, has agreed upon a 'Corporate Social Responsibility Charter' with unions. The charter defines social minimum standard at GeoPost-companies and serves as a benchmark for business partners: 'In countries where subcontracting rules are governed by national legislation, the GeoPost group shall ensure that said rules are applied by all stakeholders. In countries where such provisions do not exist, the group shall refuse to do business with partners who engage in unacceptable social practices worsening working and income conditions. This Charter may be used as the basis for developing relationships with partners. The observance of these GeoPost Group Standards will be sought in an appropriate matter with new or existing system partners / sub-contractors.'

However, controlling and enforcing subcontractors' compliance with social minimum standards is not an easy task. Improved working conditions and higher wages would lead to increase of labour costs of a parcel service providers. Parcel service providers therefore would have to compensate these costs by either increased tariffs or other measures to save costs.[530] It is unclear whether all providers are willing or able to implement these measures.

Common understanding of the sources having led to the current situation is that price pressure on the parcel market is very intense and has further increased during the last years, mainly due to booming e-commerce, high share of return shipments and customer expectation to benefit from free of charge delivery.

**530** Holst, Hajo / Singe, Ingo; Precariousness and Informality – Work and Employment in the German Parcel and Delivery Industry, Work Package 2, October 2011, p. 31.

#### 3.4.3.4 Key drivers of employment and wages development

The table below summarizes view reported by USPs and NRA (in response to our survey) on the main drivers of employment and wages in the postal sector since 2000.

Table 3-16 Major drivers of the development of employment and wages in the postal sector since 2000. Answers of USP and NRA

| **Driver** | **Driver considered important by USPs (% of answers)** | **Driver considered important by NRAs (% of answers)** |
|---|---|---|
| Advances electronic communication | 22% | 7% |
| Changes in volume and unit costs | 21% | 15% |
| Increases in competition | 11% | 13% |
| Postal regulation | 9% | 6% |
| Changes in labour laws and regulations | 6% | 11% |
| Commercialization of the Universal Service Provider | 6% | 7% |
| Changes in overall labour markets | 5% | 22% |
| Advances in transportation and logoistics technologies | 0% | 9% |
| Other | 19% | 9% |

Source: WIK Survey; cumulative answers to questions on first / second / third most important influence in the development of employment and wages in the postal sector since 2000; n= 16 – 23 (USP); n = 13 -22 (NRA)

More than 20 percent of USPs rank the progress in electronic communication and volume developments among the most important drivers of employment and wage development in the postal sector in recent years. About 11 percent name increasing competition as a relevant impact, 9 percent say so for price regulation. Relatively less importance is given to commercialization of USPs, changes in labour regulation and general labour market development. The latter assessment is especially notable as this factor has been ranked as the most important driver of employment and wage development by NRAs. NRAs also consider volume developments, increasing competition and changes in labour regulation as relevant for employment and wage development. According to the estimate of NRAs, postal regulation has only low impact on employment and wages.

### 3.4.4 Regulation of labour conditions in the postal sector

Wages and working conditions are regulated by generally applicable labour law frameworks and collective labour agreements (where these exist). Working conditions for employees of incumbent postal operators are traditionally strongly regulated and governed by collective labour agreements between their trade unions and employers for all EU Member States. Working conditions for employees of other postal service providers are by less frequently regulated by collective labour agreements. At the level of subsidiaries or associated companies of incumbent postal operators, there are not

always collectively agreed agreements on working conditions in the EU Member States. The results of our survey show that collective labour agreements for these companies exist only in DE, ES, FI, HU, IE, IT and SE, but these collective labour agreements at USP subsidiaries are not necessarily the same that apply to staff employed directly at the USP.

For competitive postal operators, collective labour agreements are the exception rather than the rule. According to information from USPs, competitors have reached collective labour agreements only in CY, ES, FI, NL, SE, SI and NO. A model example of a sector-wide agreement is provided by Sweden. The agreement governs working conditions for employees of the incumbent as well as the competitors in Sweden and therefore ensures homogenous labour conditions for all market participants (see Copenhagen Economics 2010, p. 165ff). Similar approaches for a sector-wide accord have been initiated in IT, NL and FR (where negotiations appear most developed).[531]

Case study 3-25 Social regulation of employment contracts in NL

The regulation of labour conditions in the postal sector in the Netherlands is a special case. In NL, labour conditions are not governed by authorization procedures. The postal law of 2009 contains an option for the government to be able to issue a decree on working conditions in the postal sector if all of the following circumstances apply:

- Conditions of labour contracts are socially inacceptable:
- The issue is temporary and limited to the postal sector:
- The issue cannot be resolved by means of an agreement between employers and representatives of employees.

This provision has been included in the postal law in order to prevent pressure on labour conditions of the universal service provider in case of full market opening due to self-employed delivery staff at competitive postal operators. Social problems as well as reductions of the universal service had been suspected.

This development was one of the reasons for postponing planned full market opening until the parties to the collective labour agreement found a solution (the other reason being the introduction of a postal sector-specific wage floor in Germany in 2008). The market was finally liberalized after a collective labour agreement had been adopted. The agreement requires a step-wise increase of regular employment contracts for competitors of PostNL to up to 80%. This collective agreement was supported by a decree based on Art. 8 of the 2009 postal law. Due to several legal disputes the decree has been edited anew in January 2012 and a schedule for the increase of regular employment contracts has been defined: on 1 February 2012, the share of regular contracts at competitors had to be at least 10% and to increase to 25% until 30 June 2012, to 40% until 31 December 2012, to 60% until 30 June 2013 and to 80% until 30 September 2013.

531 See European Social Dialogue Committee of the Postal Sector 2011, p. 19.

If collective agreements do not exist, new market entrants in postal markets agree individually on wages and working conditions with employees. In some countries, collective labour agreements of neighbouring sectors apply (e.g. transport or trade sector). This is the case in seven EU Member States, amongst others, in AT and IT.[532]

Table 3-17 Social regulation: Collective labour agreements and minimum wages

| Country | Collective Labour Agreement with USP | Collective Labour Agreement with USP subsidiaries | Collective Labour Agreement which includes USP competitors | National Minimum Wage |
|---|---|---|---|---|
| AT | - | - | - | × |
| BE | Yes | × | × | Yes |
| BG | - | - | - | Yes |
| CY | No | - | Yes | Yes |
| CZ | Yes | No | - | Yes |
| DE | Yes | Yes | No | No |
| DK | Yes | No | No | No |
| EE | Yes | No | No | Yes |
| EL | Yes | No | - | Yes |
| ES | Yes | Yes | Yes | Yes |
| FI | Yes | Yes | Yes | No |
| FR | Yes | - | - | Yes |
| HR | Yes | - | - | Yes |
| HU | Yes | Yes | No | Yes |
| IE | Yes | Yes | No | Yes |
| IT | Yes | Yes | No | No |
| LT | Yes | No | No | Yes |
| LU | Yes | - | No | Yes |
| LV | - | - | - | Yes |
| MT | Yes | - | No | Yes |
| NL | Yes | - | Yes | Yes |
| PL | Yes | No | - | Yes |
| PT | Yes | No | No | Yes |
| RO | Yes | No | No | Yes |
| SE | Yes | Yes | Yes | No |
| SI | Yes | No | Yes | Yes |
| SK | Yes | No | No | Yes |
| UK | Yes | No | No | Yes |
| IS | - | - | - | Yes |
| LI | - | - | - | No |
| NO | Yes | Yes | Yes | No |
| CH | Yes | Yes | No | No |

Source: WIK survey, Eurostat (National Minimum Wage)

There are legal rules on employment conditions of new market entrants in the postal sector in the majority of the survey countries. These legal rules define a minimum level

**532** Cf. European Social Dialogue Committee of the Postal Sector 2011, p. 19.

of social protection of employees in different ways: In the majority of EU Member States national minimum wage levels exist. Exceptions are AT, DE, DK, FI, IT, SE as well as LI, NO and CH. There are postal sector specific minimum wages in AT, ES, SK, SK according to information of the European Social Dialogue Committee of the Postal Sector[533]. There are three countries where competitors in the postal sector are neither subject to collective labour agreements nor binding national wage floors (DE, DK and CH).

In addition to social regulation by general labour legislation, binding wage floors and regulation of labour conditions by collective labour agreements, there are specific rules on working conditions in the national postal laws of some Member States. Germany had been the first country that included social aspects as the objectives of sector specific regulation in its postal law in 1998. This was implemented by § 6 (3) No. 3 of the postal law. According to this social provision, the NRA is obliged to take working conditions into account when issuing licences for competitive postal operators. New entrants may not deviate fundamentally from working conditions that are prevailing in the national postal sector. The intention of this rule was apparently to prevent excessive competition on wage.[534]

**533** See ibid.
**534** However, no licence has been revoked from a licence holder or refused to be issued due to a breach of this social provision since German postal law entered into force in 1998.

Table 3-18 Legal basis for regulation of labour conditions for postal operators

| Country | Authorisation requires respect for conditions of employment / social security by law | Are the providers governed by similar requirement not specific to postal sector | Authorisation requires the postal operator to respect working conditions laid down in national legislation |
|---|---|---|---|
| AT | No | Yes | No |
| BE | Yes | No | No |
| BG | No | - | No |
| CY | No | Yes | Yes |
| CZ | No | Yes | No |
| DE | Yes | Yes | Yes |
| DK | No | Yes | No |
| EE | No | No | No |
| EL | Yes | Yes | Yes |
| ES | No | Yes | Yes |
| FI | No | Yes | No |
| FR | Yes | Yes | Yes |
| HR | No | No | No |
| HU | Yes | Yes | Yes |
| IE | No | - | No |
| IT | Yes | Yes | Yes |
| LT | No | - | No |
| LU | Yes | Yes | Yes |
| LV | Yes | Yes | No |
| MT | Yes | Yes | No |
| NL | - | - | - |
| PL | No | - | No |
| PT | Yes | Yes | No |
| RO | No | Yes | No |
| SE | No | - | No |
| SI | Yes | Yes | Yes |
| SK | No | No | No |
| UK | No | Yes | No |
| IS | No | Yes | Yes |
| LI | - | - | - |
| NO | No | Yes | No |
| CH | Yes | Yes | Yes |

Source: WIK survey

For many years, the implementation of social regulation into EU postal legislation has been subject to discussions, and the third Postal Directive explicitly permits (but does not require) social rules for postal operators in order to secure social standards and reasonable working conditions in Europe. Member States may ensure compliance with certain 'essential requirements' in their authorization procedures which may also include labour conditions or social criteria.[535] For services within the scope of the universal

535 Essential requirements are defined in Art. 2 (2) no. 19 of the Postal Directive and include 'respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or

service, the granting of an individual licence may – amongst others - 'be made subject to or impose an obligation to respect working conditions laid down by national legislation.' (Art. 9 (2) Postal Directive 2008/6/EC).

Table 3-19 Social license requirements in selected countries

| Country | Main content | Legal citation |
|---|---|---|
| AT | The licence holder is obliged to respect appropriate employment conditions including wages and has to apply collective labour agreements in order to avoid social discrimination and wages under prevailing level. | § 27 (2) Postal Market Act (01.01.2011) |
| BE | The licence holder is obliged to have up to 80 % of his employees with labour contracts and has to respect collective labour agreements. The objective is to ensure the continuity and quality of the Universal Service on the one hand and protection of employees on the other hand | Art. 148decies. § 1 of the Law of 21 March 1991 |
| DE | Social clause in postal act. Licence holder has to respect prevailing working conditions in the sector. | § 6 (3) No 3 Postal Act (1998) |
| HU | The licence holder and the USP is obliged to have at least 2/3 of delivery staff in employed position. Employment rules are flexible, no full-time employment needed. Reason: To reduce grey economy. | 37. § (1) Act CLIX of 2012 on Postal Services |
| NL | Amendment of the law to oblige postal operators to, when needed, provide labour contracts to their employees. The exact terms and conditions for these labour contracts are documented in secondary legislation. | Art. 8 Postal Act (Postwet 2009) |

Source: WIK survey, Input Consulting

According to our survey, several national postal laws which have been amended to comply with the Third Postal Directive contain regulations on labour conditions. Nearly all national postal laws in the survey countries impose social requirements on postal operators obliging them to comply with national labour legislation and collective labour agreements (in conformance with Art. 2 no. 19 of the Postal Directive). In addition, some Member States have implemented social rules in their single authorization procedures, requiring compliance with different social or labour legislation rules as a pre-condition for licensing (Table 3-19). Social license conditions require either compliance with collective labour agreements or wage levels in compliance with those prevailing in the sector as a whole (e.g. in AT, DE). Another approach on securing social standards in the licensing terms is undertaken in BE and HU where licenses require postal service providers to perform their operations with own employees in order to prevent the evolution of self-employed, unprotected employment contracts in the postal sector.

administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law'.

### Case study 3-26 Social regulation in the Hungarian postal law 2012

An up-to-date example for social regulation is provided by Hungarian postal law (Law CLIX of 20 October 2012) transposing the Third Postal Directive and fully opening the national postal market. The debate on the postal law lasted for about two years. Several provisions on social and labour conditions had been added at a relatively late stage of the law making process in order to attach importance to social aspects of the liberalization process. Trade unions and the legislator suspected that employment contracts with low social standards in the letter post markets could emerge. Similar developments had already taken place in other segments related to the postal market, especially in the segment of unaddressed mail and parcel delivery. Essentially, there were two objectives. First, to prevent illicit employment. Second, to fight self-employed delivery staff who in fact deliver for a single operator only and for whom often no social contributions were made. The dispersion of such employment contracts could have incorporated the risk that regular employment contracts of the universal service provider are under pressure. Therefore, postal law in HU requires that new market entrants also fulfill social criteria.

Postal service providers offering services outside the USO are not subject to the authorization procedure but have to register at the NRA. For registration, they need ‘a certification that the conditions of lawful employment relationships are satisfied’, § 10 (3i) CLIX 2012. Such a certification is issued by the national labour authority and commonly used in HU (amongst others, it is necessary for participation on public tendering procedures). The authority surveys and confirms whether the service provider is compliant with labour legislation as well as provisions on maximum working hours, payment of overtime, regulations on health and security protection and illicit employment.

This certification is also required for operators providing services within the USO when applying for a license. The licensing process establishes certain requirements. Amongst others, HU postal law requires proof of (economic) capability, technical qualifications and reliability as premises for issuing a license.

HU postal law (§ 37 (1) CLIX 2012) requires license seekers also to perform delivery activities with own staff in order to prevent self-employment and erosion of social security contributions. According to this provision, only up to one third of delivery activities may be outsourced to external service providers. Outsourced activities have to be performed by own staff employed at the subcontractor according to standard labour conditions. A license will be withdrawn if an operator violates this requirement more than once per year.

This regulation of labour conditions in HU prevents use of subcontractors as self-employed operators as it is the case in express and parcels markets. Insofar, the social provisions in HU postal law appear as an effective instrument of social regulation. Whether these regulations impose a market entry barrier for new entrants remains to be seen. Up to date, there is only one license applicant in HU: Feibra, a subsidiary of Austrian Post. The analysis of the competitive effects of social provisions in the postal law has to take into account that HU, postal law generally makes high demands on quality and economic capability.

Case study 3-27 Negotiations of a labour agreement for the whole postal industry in FR

The French Postal Act No. 2005-516 of 20 May 2005 contains a provision for the social regulation of suppliers active in the postal market. According to section 26 of this Act as of the 1st July 2006 a joint committee was established with representatives of trade unions and employers' representatives of the postal sector on the basis of the legal regulation with the stated aim 'to negotiate a collective agreement applying to employees of La Poste without civil-servant status and to employees of firms licensed under Article L.3 of the Post and Electronic Communications Code. Thus in December 2006, an employer association of companies active in the postal market was founded on the initiative of the French incumbents La Poste with the 'Syndicat des Opérateurs Postaux' (SOP) [Post Operators Organization]. In addition to the universal service supplier, La Poste, the SOP can include all the postal operators which are authorized by the national regulatory authority; this includes operators which are international suppliers such as DHL Global Mail, Joint Venture Spring, Belgian Post, operators with a national scope like Adrexo, and a number of regional mail service providers. The aim of this association is on the one hand to represent the economic and political interests of the companies of the sector, and on the other to agree on a collective labour agreement pursuant to the regulations of the Postal Act which called for the launch of negotiations between the social partners in view of concluding a sector-wide collective agreement.

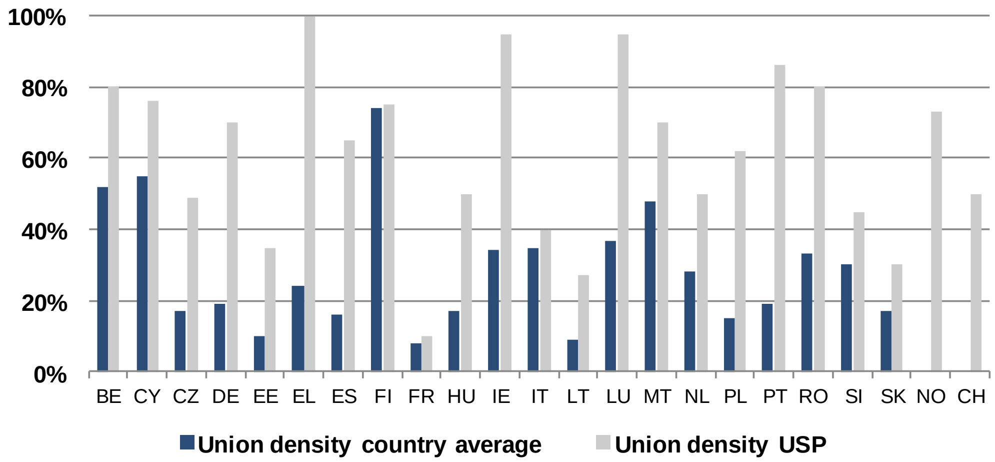
In April 2007, negotiations began over a collective labour agreement for the postal sector between the SOP and the CGC, CGT, CFDT, CFTC, FO, and SUD unions. In France, the law sets some key issues which should be included within a collective agreement and the discussion among social partners enables to define further social norms. Subject of the negotiations here were the issues of social dialogue, fundamental labour rights, and health and safety standards. After lengthy negotiations, these issues are now (May 2013) largely settled. The negotiations on the pay system as well as minimum remuneration are still to be completed. The scope of the collective sectoral agreement is set by the law but there are still some discussions on it. Some trade unions would like to enlarge it while the employers prefer to maintain the scope set by law; actually this extension would require several conditions which are not met. The collective agreement is viewed as an important tool to ensure that the social norms set can enable the smooth opening of the market. However until now, in view of the general economic situation and decreasing mail volumes, no new entrants with a national coverage and in charge of all mail segments have entered it. (after Adrexo had left the market).

### 3.4.5 Role of social partners

Collective labour agreements between trade unions and employers' associations or companies generally exist at all USPs while only few competitors apply collective labour agreements with their workers or unions. Similarly, a unionised representation of employees' interests is ensured at postal incumbents, and workers' councils are organised wherever this is legally required but employees' interests are represented less frequently at competitors. 'In most countries, new entrants seem to be still hermetic to the establishment of a real social dialogue: trade unions have difficulties to establish dialogue with net entrants and there are only few examples of trade union' or

employers' organizations which are encompassing both the national postal operator's and new entrants' representatives.'[536]

Figure 3-53 Union density in the Member States: national averages of all sectors, and USP




Source: Union density USP: WIK-Survey, BE, FR, IT, NL: European Social Dialogue Committee of the Postal Sector (2009): Project 'The Social Observatory of the Postal Sector', Grant Agreement 2008/2009, VS/2008/0489; DE: ver.di; Union density country average: European Industrial Relations Observatory (EIRO) online (OECD and other sources). No data available for AT, BG, DK, LV, SE, UK, LI, HR

There are well-established routines for social partners at incumbent postal operators. This is expressed also by the high share of employees organised in trade unions. The unionisation rate USP employees is in almost all survey countries above the national average. However, unionisation rates at USPs are declining. In new business segments (e.g. financial services, express and logistics) or at subsidiaries of incumbents, the rate is below the level in traditional postal services segments, according to information of postal unions. But unionisation declines also in core postal segments due to weak readiness to join unions of newly engaged staff, and especially those of part-time or temporary employees.

This development will, in the medium term, have consequences for the role of social partners and social regulation of the postal sector. The share of union members among employees is to be seen in strong relation with the ability to enforce negotiated labour agreements upon employers. Obviously, negotiated labour agreements barely exist in sectors with low unionisation rates.[537] From the view of postal workers, this incurs a risk

536 European Social Dialogue Committee of the Postal Sector: Project 'Social partners preparing for change'. Second step of the Social Observatory, Grant Agreement 2010/2011, VS/2010/0385, p. 6.
537 See Ecorys: Main developments in the postal sector (2006-2008), Final report, 2008, p. 223.

of low social regulation, which leads to further distribution of atypical employment which leads to declining unionisation rates and wages.

Despite controversy among social partners in negotiating labour conditions for the postal sector, they succeeded in many Member States in designing sectoral change and restructuring USPs operations in a socially responsible way. Staff reductions were realised mainly by early retirements and by attrition. In addition, measures to improve further education have been implemented, resulting in increased external mobility of employees. In return for refraining from forced layoffs, trade unions have in some cases approved lower starting salaries for newly employed staff and agreed to increases in contracts with more flexible employment conditions. Two different examples for change management agreed by social partners at universal service providers are shown by Case study 3-28 (bpost and PostNL).

On the European level, structural changes in the postal sector and its social organisation are accompanied and formed significantly by the employers' association PostEurop and the European association of service unions (UNI Europa). In April 2012, the European Social Dialogue Committee for the Postal Sector (Working Group on Postal Sector Evolution) has issued a new 'joint declaration' emphasising the significance of social dialogue in the postal sector and its function as a 'social observatory' on the European level.[538]

The main messages of the Joint Declaration are

- Acknowledgment by social partners of the continuos and rapid change
- Recognition that varios approaches of adaption are possible
- Change management presented as a necessary tool for the long-term sustainable economic development of the sector
- Need for a balance between enhancing employability and the requirement for adaptability to the new market circumstance.

The Joint Declaration contains following principles to accompany the transformation:

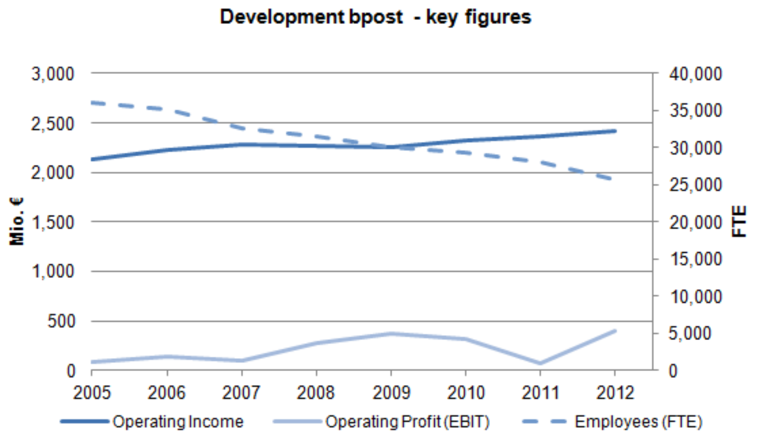
- Better anticipating the ongoing evolutions and their consequences
- Recognising that the management of change benefits from country specific social dialogue
- Developing the employees' employability to promote their internal and external mobility through training, re-deployment programmes and communication

**538** http://www.postsocialdialog.org.

- Encouraging modernization of operations to improve the adaptability of the work organization in order to better cope with new customer requirements and to increase productivity.

Case study 3-28 Change management at bpost

The Belgian universal service provider bpost (up to 2009: De Post – La Poste) began restructuring the company and adjusting to the changing framework conditions after the turn of the century. In 2002, Belgian Post was faced with a series of difficulties: the company was working in deficit, it had a comparably high number of staff, its capital resources were too low for the required investments, and finally, it was unable to satisfy customers with the quality required. Altogether, these were bad conditions to be able to operate successfully with declining mailing quantities in a competitive postal market. With an extensive modernisation and restructuring programme, the company invested in modern sorting and distribution centres, organised deliveries more efficiently, and developed new products and services in the area of mail, parcel, and finances (cf. De Post – La Poste 2005, p. 13f.). Since 2006, a private financial investor (CVC) holds 50%-1 of the shares of bpost (jointly with Danish Post up to 2009 following which CVC bought the Danish Post shares); the state of Belgium continues to hold the majority. The outcome of the restructuring process initiated around 10 years ago has proven to be a positive economic development for the company in the form of increasing revenue and profits. The yield on turnover which resulted from this process was one of the highest amongst European postal companies in 2012 at 16.7%. Restructuring the company included considerable downsizing. Between 2005 and 2012, the number of employees was reduced by around 30%, from 35,000 to 25,675 full-time employees, and productivity of bpost employees then increased by 60%.




*Source: bpost - data from annual reports*

While the employment of staff becoming more flexible and reducing personnel costs were of fundamental importance to the employers, the first priority for employee representatives were maintaining good working conditions and securing (full-time) employment relationships in the negotiations about restructuring measures. The unions had prevented the recourse of self-employed delivery staff or the increased employment of part-time and fixed-term employment with industrial action in 2009, amongst other measures, as had been deemed necessary by bpost to increase their flexibility, following the Dutch example. However, they agreed on a new wage system with lower compensation for new employees in comparison to the status quo (cf. Copenhagen Economics 2010, p. 176). Since restructuring had begun, the social partners had

agreed on a series of measures for the necessary objectives of the company which could be achieved in a socially responsible and acceptable way for the unions. This included a series of regulations which enabled older employees to retire prematurely and/or partially. In light of the employment structure at the company with a high proportion of statutory employees and staff members older than 50, this was a promising strategy for reducing costs and increasing the personnel adjustment at the company. In particular, components of measures agreed on in multiple negotiated collective agreements between the social partners were:

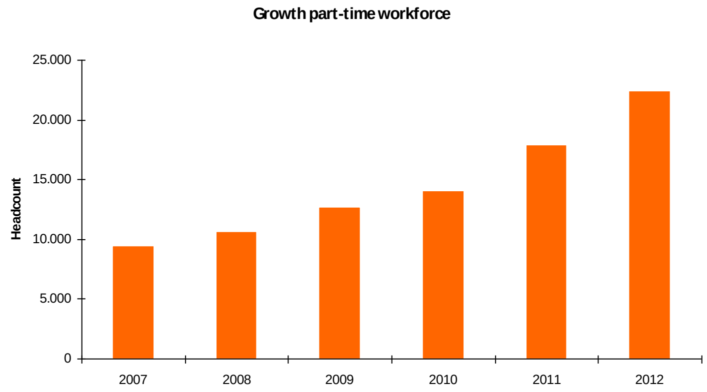
- The option for part-time employment (50%) with a partial wage adjustment (85 – 95%) for employees over 50 (but this option is not available anymore) ;
- Early retirement schemes for employees from the age of 58 and an employment period of 35 years;
- Flexible compensation with performance-based payment and monetary incentives by introducing bonuses for achieving certain profit targets and maximum leave.
- Introducing a new wage system below the level of compensation at that time for new employees.
- Limited hiring of auxiliary staff in delivery

The extensive and far reaching process of transformation took place at bpost on the basis of a strong social business partnership tradition at the company. 'Social dialogue has made a major contribution to De Post-La Poste's profitable development in the past few years. We never sufficiently dwell on the fact that the changes have always been implemented in a socially responsible way, without compulsory redundancies and on the basis of constructive dialogue between social partners.' (Martine Durez, Chairman De Post-La Poste, Annual Report 2009, p. 4) There was consensus from the beginning between both the company as well as the union regarding the necessity to fundamentally restructure the postal company in order to lead it into a successful future under the changing economic and regulatory framework conditions. There was also an overwhelming consensus that in order for accompanying changes for the employees to occur, work processes had to change and job cutbacks had to be made. In addition to a generally early integration of employer representatives in the restructuring process, open communication about the position in question, and the strongly anchored ability to balance diverse (regional) interests in the Belgian political system, the adjustment process which had begun early was responsible for being able to achieve restructuring and downsizing over a long period of time and without social hardships.

## Case study 3-29 Change management at PostNL

The Dutch postal service had already comprehensively been transformed from a national postal government body into an independent international postal company about 20 years ago, the first postal company in Europe to do so. In 1994, the ‘Royal Dutch Post’ (KPN - Koninklijke PTT Nederland) was fully privatised and listed on the stock exchange, and in 1996 a diversified and international postal, express, and logistics corporation was created with the acquisition of TNT. Since then, the company has undergone constant change; in 2002 it sold its logistics division to a financial investor and then in 2011 gave up its diversification strategy with the demerging of the international express business (TNT Express). Since then, the former TNT Post has been operating under the name of PostNL, focused on the postal business in the Netherlands (as the USP), Germany, UK and Italy; in the three last countries it is in competition with local incumbents in the postal market.

The Dutch mailing market is characterised by a very rapid progressing electronic substitution for physical mailing by international comparison. Between 2000 and 2012, the volume of mail in the Netherlands is reduced by around 40%. Since 2010, the annual decline of physical letters has been between 8 and 10% per year (PostNL Annual Report 2012, p.13). In addition to the comparably strong substitution the company experiences a strong competition with new providers in the domestic market, which had already been competitors prior to the full liberalisation of the market in 2009 in commercial direct mailing. As low-cost carriers delivering their accumulated volume only twice a week, they were highly competitive in price with PostNL. The Dutch market is the most competitor-intensive in Europe, and the market share of the new postal company in 2012 was 19%. The majority of this was allocated to Sandd, which after the takeover of SelektMail in 2011 was now the only relevant, nationwide provider for advertising mail and magazines distribution (cf. PostNL Annual Report 2012, p.19). As a response to the increased competition and the declining volume of mail, which is continuously reducing the turnover and profits of the company, TNT Post / PostNL issued multiple master plans, beginning in 2001, which were to lead to approximately 300 million Euro in annual savings for the corporation through various restructuring measures (TNT Post 2006, p. 43). 80% of the costs for PostNL are personnel. One of the most drastic measures for this was the process which began in 2002 of a step-by-step replacement of the then dominant full-time staff with newly appointed part-time employees in mail delivery. This was to considerably reduce personnel costs and put the company in a position to be able to operate the declining mail volume more flexibly. A collective labour agreement concluded in 2003 for the new part-time employees stated that the wages would start on the level of the general minimum wage in the Netherlands. The position of a mail deliverer at PostNL was therefore now no longer a job with which one could support a family from this one income; instead it became an opportunity to earn supplementary income for ‘part-time mail deliverers (who) can combine their work with other employment, study, leisure or family activities.’ (PostNL Annual Report 2012, p. 32) In consequence of this strategy the number of part-time employees increased to 33,000 by 2012, making up 92% of all staff delivering mail at PostNL (PostNL Annual Report 2012, p. 21).




Source: PostNL

In light of the continuing decline in revenue due to competitors and the electronic substitution to physical mail, in 2007 the remaining full-time employees were affected by additional reorganisation measures. In this year, TNT/PostNL planned to downsize the company, which also could include layoffs. TNT/PostNL had been prepared to avoid redundancies if the basic pay scales at the company were reduced by 25% as an alternative; also offering compensation for that to older employees. While reducing wages by 15% for the lowest four pay scales in return for employment security was accepted by the unions as a compromise after long negotiations, the union members ultimately rejected the outcome of the negotiations. However, the company agreed to a socially responsible workforce reduction in 2007. The collective labour agreement concluded for this provided good support for workers under 55 to find another job and provided social responsible solutions for employees over 55 by early retirement schemes. A large part of the downsizing, which affected full-time employees especially, was to be achieved through a 'mobility programme', which aims to guide employees from their existing job to a new job.

'After coordinating with the trade unions and works councils, TNT has decided that the employees who are subject to these efficiency matters can make use of the provision of the collective mobility agreement. This social plan comprises a wide range of measures making it possible to carry out the planned reduction in the number of employees in a social responsible manner.' (TNT Annual Report 2007, p. 88) With this programme, the company aimed to prepare employees for other employment opportunities at the company or to guide them to employment outside the company via consultations, coaching, and achieving qualifications. Participation in the mobility programme was initially voluntary for all employees who want to make changes. However, if specific positions were discontinued due to the measures described, then participation was obligatory for the employees affected and within a year the company would prepare them for changing to a position outside of the company. This change also involved a severance package. Between 2006 and 2012, more than 7,000 employees of a population of 11.000 FTE mailmen have left the company with the help of the mobility programme. Trade union representatives told, that many employees left the company due to an attractive budet. Their employment contract ended after approval between the company without participating in this programme.

In 2010 there was a new restructuring process, with the objective of concentrating the preparation of to be distributed mail at fewer locations and using automatisation as much as possible. 'All local offices will be closed and replaced by depots where part-time mail deliverers pick up their fully prepared mail. As a consequence of this reorganisation, the job previously filled by the traditional full-time mailman will now be performed by more than one person. Preparation of mail delivery rounds and delivery of mail will become specialised, part-time jobs. The job of the traditional full-time mailman, who both prepares and delivers the mail rounds, will

disappear. The implementation of this new operational model started early 2012, had some delay, was changed and will go on until 2014. PostNL will gradually go from 300 delivery offices to 125. in 2015 It is intended that the Master Plans will lead to annual cost savings of around €330 million by 2017 compared to 2011.' (PostNL Annual Report 2012, p. 22). Looking at the whole reorganisation period from 2006 onwards 11,000 job cutbacks were planned at the start of this measure, 4,500 estimated in the form of redundancies. This again affected the remaining full-time mail deliverers and sorters. Following industrial action in 2010, the unions were able to achieve a temporary reprieve from cutbacks, and additionally the number of those who had to leave the company in the upcoming year was halved, from 4,500 to 2,300. By further adjusting the plans the number of (unvoluntary) redundancies are estimated to concern no more than 450 – 650 FTE mailmen.

While the reorganisation of TNT and PostNL was very far reaching and marked by heated disputes between the company and the unions, the whole process took place on the basis of a social partnership and with a series of collective labour agreements. In spite of all differences, both the corporate business partners as well as the Abvakabo FNV union demonstrated a constructive way of proceeding with the social partnership in managing the immense challenges faced by PostNL 'We intend to accomplish this transformation in a socially responsible way by transferring our employees from work to work and avoiding compulsory redundancies as much as possible. These restructuring plans have a significant impact on the employees involved as jobs and responsibilities change and there is a considerable reduction in the number of full-time jobs within the operational unit. … To accomplish the transformation in a socially responsible way, PostNL has a social plan in place that focuses on stimulating voluntary dismissal. This social plan helps us mitigate the effects of the reorganisations. We are pleased that PostNL and the trade unions have agreed to extend the current social plan until 1 January 2014'. (PostNL 2012, p. 32). The mobility programme agreed on in 2007 was generally met with approval and viewed as unavoidable by the social partnership, and it was accepted as a socially responsible instrument for downsizing. According to information from PostNL the actual number of unvoluntary redundancies up till now (June 2013) has been less than forty.

# 4 Analysis of Main Developments and Implications for Future Postal Policy

## 4.1 Fundamental economic and policy parameters

### 4.1.1 Key market developments and the evolving role of postal services

Almost a decade and a half into the twenty-first century, the role of postal services — including all types of delivery services — is changing rapidly and fundamentally. On the one hand the volume of paper-based communications has declined in many countries as paper has been supplanted by new and improved types of electronic communications: email, internet sites, and electronic messages conveyed via a wide variety of computers, tablet computers, and mobile phones. On the other hand these advanced electronic communications systems are expanding the volume of packages conveyed by postal services. The Internet is competing with, and to some degree, supplanting 'brick and mortar' stores. This is also visible in the main developments in the European postal market.

Letter post volumes are in decline in most European countries. Countries with well-developed letter post services and high per capita volumes experienced the strongest decline, particularly in countries with well-established and broadly used infrastructures for electronic communications. Digital agendas at EU and country level promote use of internet applications and services, that often lead to a decline in mail demand, particularly for letters. Direct mail and publications appear to be less affected by this trend. Moreover, the ongoing economic recession still limits the growth potentials in mail demand in Eastern and Southern countries. In combination with upcoming electronic alternatives and substantially less developed markets for addressed advertising, these markets will most probably never achieve the demand levels that Western Member States currently have, or have had in the first years of the millennium.

Additional to the overall decline in mail volume there is a general shift from priority to non-priority letters particularly in the Nordic countries and in the Netherlands. In many Southern and Eastern Member States the demand for priority services was generally lower for historical reasons. This trend affects delivery patterns of postal operators because non-priority items generally need less than six or five day delivery per week. Moreover, the financial situation of universal service providers is challenged as the key pillar of the postal revenue, letters, is under pressure. For this reason it is not surprising that universal service providers launch cost savings programs with negative impact on employment level and conditions, increase postal tariffs (particularly for single-piece items), and adapt postal operations to improve efficiency within the limits of the universal service obligation. However, increasing prices and changing service levels may further push volume decline.

While there was a substantially more positive environment for investment in the postal sector when the first Member States opened their postal markets (in particular SE, ES, DE, NL), the structural decline in mail volume has effected a more negative market environment when other Member States fully opened postal markets in 2011 (or 2013). These market conditions and existing barriers to competition like unequal VAT treatment, restrictive authorisation conditions and abuses of the incumbents' market dominant position inhibit the development of competition in letter markets. Shrinking letter markets are not attractive for new entrants particularly in Western and Southern Member States. There is hardly any increase in end-to-end competition for letter post in Western countries. Profitability of competitive mail operators appears marginal, and generally below expectations. Only in some Eastern countries competition is emerging.[539]

In contrast to shrinking letter post markets, parcel & express markets are growing. However, the growth is unequally distributed among the segments. Overall, deferred standard parcel services grow more than express shipments . Shipments between businesses and consumers (B2C) grow strongest, while there are lower growth rates in B2B volumes. The most important driver for B2B is economic growth while the big trend to buy goods online (e-commerce) promotes B2C shipments. E-commerce has substantially pushed distance selling domestically and, increasingly, cross-border. Furthermore, selling goods online has broadened the customer base for postal and parcel operators. However, growth in parcel and express volumes is generally higher than growth of revenues on these markets. This results from a shift from express to deferred parcel services and an increasing share of low priced B2C shipments which leads to overall decreasing average revenues.

Domestic parcel & express markets are differently developed among Member States. Basically, the size of the domestic B2B segment depends on the economic activities of the country. The stage of development in domestic B2C segments depends on the country-specific tradition in distance selling while average expenses are related to per capita income. In the Western countries with long traditions in distance selling, and high per capita income, the B2C segment is well-established and was dominantly served by the universal service providers in the past. Based on these traditions e-commerce has grown substantially and is expected to grow in the future. So far, distance selling plays a smaller role in many Eastern and Southern countries. For this reason B2C shipments are still relatively low but, due to e-commerce, they are now dynamically growing.

In many European countries the segments for domestic and cross-border B2B shipments are generally more competitive than the ones for B2C shipments. Domestic and cross-border parcel and express operators have successfully developed the B2B

**539** Reasons for more competitive development in these markets include better prospects for economic growth in these countries and less mature letter markets generally. In addition, some universal services providers may not fully meet the needs of the customers, which adds to the prospects of their competitors.

business with high quality and innovative and customized delivery services. The market is characterised by many players including the universal service providers that usually have a small share in this segment. This is different in the B2C segment. Basically, universal service providers have a first mover advantage in B2C delivery due to their dense, nationwide access and delivery networks. In many Western countries the universal service providers have taken advantage of these assets and have modernized and are expanding their parcel operations to meet the growing demand in this segment. Next day delivery and tracking & tracing are often integral part of the standard parcel services in these countries and universal service providers therefore have substantial shares in B2C shipments.

However, the dynamically growing market segment attracts new players so that competition is generally increasing. B2B carriers are investing in sorting and delivery capacity and launching pick-up points in many countries. In the largest domestic distance selling markets, France, Germany and the UK, B2C carriers (founded by large distance sellers years ago) extend their operations. In many Western countries the carriers also develop innovative delivery solutions (SMS alert, alternative delivery points, time definite delivery) in order to improve recipients' convenience and to limit delivery costs. Even mail operators are entering this segment and offer high quality delivery services for e-retailers.

For mail operators, universal service providers as well as their competitors, the growing B2C segment also creates business opportunities. Online sales not only increase the number of parcel shipments but also blow the demand for letter post services. E-retailers make use of direct mail to improve their visibility. Catalogues still play an important role in distance selling. But, most importantly, goods are not only sent by parcel but also by letter post so that the share of flats and bulky letters is increasing. And finally, some but not all universal service providers compensate for declines in letter post revenues by revenue from parcels.

Cross-border shipments are still dominated by B2B parcel & express services. Promoted by the internal market for goods and services within the European Union B2B parcel & express services are already a well-established international business not limited by country boundaries. International express and parcel carriers, notably DHL, UPS, TNT Express and FedEx but also the European ground networks of DPD (French La Poste) and GLS (British Royal Mail Group) offer their services European-wide. Cross-border B2C shipments become more and more important. Consumers increasingly order goods in other countries, predominantly in countries with the same language and similar cultural backgrounds. Universal service providers cooperate to simplify reliable and traceable cross-border parcel deliveries in the E-Parcel Group. Moreover, cross-border returns are also managed within this group (Easy Return Solution). Parcel operators with European networks, DPD and GLS, also enforce their activities to grow in domestic and cross-border B2C shipments. Other operators expand

their business to selected countries by acquisition and organic growth (e.g. Hermes). Generally, the supply of B2C related parcel services follows demand, i.e. in countries with well-established and growing e-commerce activities (domestic and cross-border) parcel operators expand their business and develop customized services for e-retailers and their customers.

Universal service providers are still important employers in each country. Shrinking letter post markets put substantial pressure on the employment level the more the less a universal service provider has diversified in related activities (i.e. parcel operations). Universal service providers reduce their capacities in letter operations (i.e. the number of sorting facilities and delivery routes) and thus employment to compensate the decline in demand. Moreover, employment conditions are changing. Cost saving efforts of universal service providers often result in lower wages at least for new employees. Progress in sorting technology affects delivery organisation. In countries with competition in letter post markets, however, new employment opportunities have emerged. To considerable extent, drops in employment by letter carriers are compensated by increasing employment in the parcel and express sector.[540]

The main developments in the European postal sector during the last years highlight the fundamental changes in the role of postal services and the resulting transformation the postal sector has to manage in the coming years. These changes have to be carefully taken into account for the future EU postal policy.

### 4.1.2 Development of EU postal policy

The original Postal Directive was designed to bring about specific improvements in the EU system of postal services of the 1990s. The original impetus for the Postal Directive came from the competition rules and distortions in cross-border postal services. In 1987, courier companies filed a competition law complaint to block efforts by public postal operators to restrain cross-border *remail* competition. 'Remail' is the practice of conveying mail from the country where it is prepared to a post office in a second country for forwarding via the international postal system to addressees in other countries. Remail placed European postal administrations in competition with one another for the right to distribute cross-border mail. This development was viewed with grave concern by many postal officials, who believed that public postal administrations should cooperate, not compete. Remail competition in Europe became more intense after a 1986 decision by the United States to exempt most outbound international mail from the U.S. postal monopoly, allowing European post offices to compete openly for regional distribution of U.S. outbound mail. In response to the competition law complaint, postal

**540** However, the effects for the total market are difficult to quantify due to insufficient data on employment in private carriers.

administrations urged the need for the Commission to formulate a EU-level policy towards postal services before applying the competition rules.[541]

Although initially prompted by issues arising in the cross-border market, the Commission's review of postal policy quickly developed a much broader in scope. The Directive was grounded in an extensive, four-year analysis of the postal markets of the then 12 EU Member States. The Commission's proposal sought to improve the functioning of national as well as cross-border postal markets. It was published as the 'Postal Green Paper' in 1992.[542] After five more years of public consultation, in 1997 the European Parliament and Council — then representing 15 Member States — adopted Directive 97/67, the Postal Directive.

Reviewing the development of the Postal Directive, two overarching objectives may be discerned: (1) to protect and promote an affordable, reliable, and efficient universal postal service and (2) to promote a fully operational internal market in postal services.[543] Specifically, the Postal Directive aimed to harmonise and improve domestic postal services[544] and specifically to improve the 'unsatisfactory' quality of cross-border services.[545] Member States were required to guarantee, by designation of one or more 'universal service providers' (USPs), provision of a basic set of affordable universal postal services to all residents throughout the national territory.[546] According to the Directive, rates for each universal service must be geared to costs, affordable, transparent, and non-discriminatory.[547] Member States were further obliged to set service standards for each universal service and to monitor compliance with those standards.[548] An essential element of the modernisation strategy was 'gradual and controlled liberalisation of the market'.[549] The Postal Directive set price and weight limits on the scope of the reserved area and adopted the principle that the reserved area could be maintained only 'to the extent necessary to ensure the maintenance of

**541** See James I. Campbell Jr., 'Remail: Catalyst for Liberalizing European Postal Markets.' In Liberalisation of Postal Markets: Papers Presented at the 6th Königswinter Seminar, eds. Gabriele Kulenkampf and Hilke Smit. WIK Proceedings Vol. 7. Bad Honnef, Germany: WIK, 2002. By the end of 1987, the Commission had ruled out developing a 'postal green paper' as part of the Single Market program. This decision was reversed by the eruption of remail controversy.

**542** European Commission, *Green Paper on the Development of the Single Market for Postal Services*, COM/1991/0476 (11 Jun 1992).

**543** WIK-Consult, *The Evolution of the Regulatory Model for European Postal Services* (2005), p. 34.

**544** Directive 97/67/EC, Recitals 5 ('the current extent of the universal postal service and the conditions governing its provision vary significantly from one Member State to another; . . . in particular, performance in terms of quality of services is very unequal amongst Member States'), 9 ('action at Community level to ensure greater harmonisation of the conditions governing the postal sector is therefore necessary').

**545** Directive 97/67/EC, Recitals 6 ('quality of service with regard to Community cross-border postal services, is at the moment unsatisfactory'), 30 ('every effort must be made to improve and enhance the quality of services provided at Community level'), Article 13.

**546** Directive 97/67/EC, Recital 11, Articles 3 (universal service), 4 (designation of USPs).

**547** Directive 97/67/EC, Recital 25, Article 12.

**548** Directive 97/67/EC, Recitals 31, 32, Articles 16-18.

**549** Directive 97/67/EC, Recital 8 ('measures seeking to ensure the gradual and controlled liberalisation of the market and to secure a proper balance in the application thereof are necessary in order to guarantee, throughout the Community, and subject to the obligations and rights of the universal service providers, the free provision of services in the postal sector itself').

universal service'.[550] In addition, the Directive focused on the needs of users of postal services by requiring transparency of rates and performance and by requiring specific steps to protect users in case of loss, theft, damage, or non-compliance with service standards.[551] A critical innovation of the Directive was to oblige Member States to establish independent and impartial national regulatory authorities (NRAs) to 'ensure the proper functioning of the universal service and to ensure undistorted competition in the non-reserved sector'.[552]

The Postal Directive was accompanied by two measures related to competition law which completed the original statement of European postal policy. In 1998, the Commission issued a *Notice on the Application of the Competition Rules to the Postal Sector* that emphasized the need for public postal operators to comply with the competition rules.[553] In 1999, the Commission effectively resolved the original remail complaint by approving Reims II by individual exemption, a terminal dues agreement among public postal operators that was much more closely aligned to costs than the original, anti-remail agreement.[554] The Commission followed up these initial measures with several competition decisions condemning public postal operators for predatory behaviour, discrimination against mail preparation firms and remail, extension of the reserved area, and unjustified price-fixing measures.[555]

Five years after adoption of the Postal Directive, the momentum of reform slowed at the EU level. In adopting the Second Postal Directive in 2002, the Council and Parliament delayed Commission proposals to continue the reform process begun by the original

**550** Directive 97/67/EC, Articles 7(1) to 7(3). The Postal Directive also made clear that express services and document exchanges could not be included in the reserved area. Directive 97/67/EC, Recitals 17 and 18 and Article 7(4).

**551** Directive 97/67/EC, Recitals 34-35, Article 19.

**552** Directive 97/67/EC, Recital 39, Article 22.

**553** European Commission, 'Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services', OJ C39, 6 Feb 1998, p. 2.

**554** Commission Decision 1999/695/EC - *REIMS II - 15 September 1999 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement*, OJ L 275, 26 Oct 1999, p. 17. See section 2.4.3, above.

**555** Commission Decision 2001/354/EC of 20 March 2001, *Deutsche Post AG*, OJ L125, 5 May 2001, p. 27 (abuse of dominant position: predatory pricing and fidelity rebates); Commission Decision 2001/892/EC of 25 July 2001, *Deutsche Post AG - Interception of cross-border mail*, OJ L 331, 15 Dec 2001, p. 40 (abuse of dominant position: interception of remail) (see section 2.4.8, above); Commission Decision 2002/180/EC of 5 December 2001, *De Post-La Poste*, OJ L61, 2 Mar 2002, p. 32 (abuse of dominant position: tying of reserved and unreserved services; Commission Decision 2002/344/EC of 23 October 2001, *on the lack of exhaustive and independent scrutiny of the scales of charges and technical conditions applied by La Poste to mail preparation firms for access to its reserved services*, OJ L120, 7 May 2002, p. 19 (SNELPD) (abuse of dominant position: conflict of interested due to lack of independent regulator). Commission Decision 2001/176/EC of 21 December 2000, *Provision of certain new postal services with a guaranteed day- or time-certain delivery in Italy*, OJ L63, 3 Mar 2001, p. 63 (Consorzio Risposta+1) (abuse of dominant position: extension of reserved area); Commission Decision of 20 October 2004, Case 38.745, *BdKEP* (abuse of dominant position: discrimination against mail preparation firms in availability of presort discounts) (available in draft form only; see also Commission press release IP/04/1254 (20 Oct 2004); Commission Decision 2004/139/EC of 23 October 2003, *REIMS II renotification*, OJ L56, 23 Oct 2004, p. 76 (price-fixing: renewal of Reims II) (see section 2.4.3, above). These decisions are summarized in WIK-Consult, *The Role of Regulators* (2009), pp. 177-84.

Directive. The Commission had proposed to reduce the weight and price limits for the reserved area to 50 grams and 2.5 times of basic letter tariff[556] in 2003 and to set 1 January 2007 as the deadline for the next step, presumably outright abolition of the reserved area. These steps were put off by three years.[557]

Similarly, in 2004, Member States did not take up an invitation by the Commission to develop a coordinated EU position in advance of the Bucharest Congress of the Universal Postal Union, held in September 2004.[558] As a result, many Member States continued to support UPU policies that appear inconsistent with EU postal and competition laws.[559] Indeed, Commission oversight of cross-border postal practices had already been weakened by the EU's decision in 2003 to end the practice of granting negative clearance to agreements, like the Reims agreement on terminal dues, which raised questions of illegal price-fixing under EU competition rules. In 1999 and again in 20034, the negative clearance proceedings relating the Reims II terminal dues agreement had been opportunities for meaningful public review and the imposition of significant pro-competitive conditions by the Commission. Since 2003, there has been no public review of later versions of the Reims agreement.

Although enthusiasm for postal reform appeared to wane at EU-level, the public debate over the future of postal services ignited by the Postal Directive led to continuing postal policy innovations in several Member States. Sweden and Finland, which repealed their reserved areas prior to 1997, were joined by several other Member States. A 1997 German act abolished the reserved area as of 2008. A 2000 UK postal reform act authorised the NRA, Postcomm, to allow unfettered competition, which it did in 2006. The Dutch postal law of 2009 ended the reserved area in 2009. Member States also developed flexible approaches to defining and ensuring universal service (e.g., DE, NL, UK) and innovative ways to open the postal infrastructure to competitors and facilitate a multi-operator environment (e.g., FR, SE, UK).

With adoption of the Third Postal Directive in 2008,[560] the EU has again enacted substantial reform measures for the European Union as whole. The inspiration for most new measures in the Third Postal Directive may be traced to ideas pioneered in the reform-minded Member States. In ratifying reform measures adopted by progressive Member States, the Third Postal Directive, like the Member States, was focused primarily on national postal services. The Third Postal Directive therefore did not revisit two of the larger objectives of the original Postal Directive, perfection of the Single

---

**556** That is, 'the public tariff for an item of correspondence in the first weight step of the fastest category'. See Directive 2002/39, Article 1 (amending Directive 97/67, Article 7).

**557** The Commission's original proposal for the Second Postal Directive is set out in *Proposal for a European Parliament And Council Directive amending Directive 97/67/EC with regard to the further opening to competition of Community postal services*, COM(2000) 319 final (30 May 2000).

**558** WIK-Consult and J. Campbell, *External Dimension* (2010), pp. 149-52.

**559** See section 2.4, above.

**560** The Third Postal Directive is summarized briefly in section 2.1.1, above. Specific provisions are referenced throughout the analysis in Chapter 2.

Market by facilitating cross-border postal services and vigorous enforcement of the competition rules.

In the following sections of this chapter, we shall consider possible options for adjusting the legal framework of EU postal policy in light of the broader goals and accomplishments of EU postal policy to date as well the specific issues revealed by our review of recent regulatory and market developments.[561]

### 4.1.3 Postal economics: effects of declines in letter volumes

Letter post volumes are declining in many Member States, although to different extents. In this study, we have analysed the effects of volume declines on profits of postal operators by means of a cost model of postal services (for a description of the model see section 3.2.4 (financial effects of volume decline on postal operators). The model has been developed to reflect the cost function of a typical postal operator in the EU, on average.

Overall, the first and direct financial impact of volume declines are sinking revenues. The negative impact on profits is worsened on the cost side, where the high share of fixed costs in postal operations results in increasing costs per unit as volumes decline.

The model has analysed costs of four activities on the postal value chain (mail acceptance/collection, mail processing, transportation, delivery), and the extent to which they are influenced by volume declines. Since delivery typically accounts for a very large share of total costs, and comprises mainly fixed costs, delivery costs react strongest to volume declines. It is thus the change in average delivery costs which drives increase of average costs[562]. An important finding of this model is therefore the *relationship between initial (i.e. before volume declines began) letter post volumes and average costs*. A postal operator delivering high volumes per capita will experience only moderate increases of average costs while an operator with low volumes per capita will suffer from high average cost increases. This effect is caused by the fixed costs of the network.

However, while average costs increase when volumes decline, the *total costs* of an operator *decrease* to some extent because variable costs are reduced when letter volumes fall. The reductions of total costs though are disproportionally lower than the reductions in volume. Again, total cost reductions depend on the initial level of volumes per capita. If initial mail volumes are high, the decline of total costs is higher than if initial volumes were low.

---

**561** The European Commission has recently initiated a discussion of several of the issues unaddressed in the Third Postal Directive by publishing a green paper, *An integrated parcel delivery market for the growth of e-commerce in the EU*, COM(2012) 698 (29 Nov 2012).

**562** Total costs divided by letter volume.

The implications of these results on profits are evident: as volumes decline, the corresponding cost reductions are disproportionally low.[563] Thus, profits decrease also more than proportional. Reduced profitability, or even losses, are therefore to be expected in all those countries experiencing volume declines. The fewer initial letter post items per capita they have, the stronger the impact on profitability will be.

According to our stylised model, for example, a volume decline of 10 percent will lead to a drop in profit of 3.7 percent of total cost for a postal operator with annual per-capita volumes of 250 (all other things remaining equal). Following a 10% decline in volume, operators then have to earn 3.7% of total cost some way. Several postal operators have been losing substantially more than 10% of their peak volumes on the last years, leading to more negative effects on profitability. In general, postal operators have four possibilities of reacting.

First, they may *increase prices*. Price increases above inflation rates have already been observed in the past few years in some Member States (e.g. Denmark). Although price increases immediately improve revenues, the downside is that price increases also affect demand. Businesses who are typically more price sensitive than private customers might be more inclined to switch to electronic communication. Price increases therefore might further accelerate e-substitution. Stimulating customers to switch may be especially dangerous as customers that already switched are unlikely to ever come back to the letter mail communication.

Second, USPs might want to *reduce universal service levels*. There are mainly two options. USPs might reduce the quality of universal services within the boundaries provided by national legislation (e.g. extend transit times, make last collection earlier, deliver later during the day). Reducing service levels without breaching USO might be one of the quickest options and thus might be attempted by USPs who feel the urge to react. To a considerable extent, such cost improvements have already been implemented, or are being implemented by several USPs. USPs might also demand lobby for changes of their universal service obligations. Provided a lengthy political and social debate, this approach promises implications for cost reductions only in the longer term.

Third, USPs might require *external funding*, based on calculations of net cost of universal service. However, this option bears the risk that a universal service area is maintained which is overly serving the real needs of users. In that case, an inefficient service level would be maintained and overall welfare would be reduced. However, relying on public subsidies would appear as a risky bet in the medium or long term as governments budgets are tight, and public subsidies generally tend to be reduced over

**563** This result is based on the assumption that volume declines equally affect all mail products and revenue changes therefore mirror volume declines.

time. Moreover, by relying on subsidies, USPs lose immediate control over their business.

Fourth, *cost reductions* are another option to fight profitability issues. Cost reductions achieved by other means than by reducing service quality require efficiency enhancements. This appears as the most obvious response to declining revenue. Such cost reductions require re-organisation of infrastructure, production procedures, or hierarchies and may even result in job cuts. Again, such initiatives are being sought be many USPs already.

Summing up, some options promise quicker achievements than others. USPs may decide to apply a combination of the four options or focus on one. The option to reduce universal service implies the most fundamental changes for both the USP and society. However, this option would incur probably the least distortions on overall welfare, as changing communication behaviours (and therefore changing user needs) are at least one reason for reduced profitability of USPs.

### 4.1.4 Sound regulatory principles

In 2005 the Commission initiated a study on how broadly accepted 'sound regulatory principles' could be employed to improve regulation of the postal services.[564] This study identified sound principles for regulating an infrastructure service like the postal sector. They were derived from a review of the regulatory principles articulated in the European Treaties (e.g., free movement of services, subsidiarity, competition rules), general Community policy initiatives (e.g., Lisbon Strategy, services of general economic interest), sector specific directives (electronic communications, postal, energy), and scholarly reviews of Community regulation.[565] In light of this review, the study concluded that the postal regulation should incorporate reflect seven principles as far as possible:

- Specific purpose. The objectives of regulation should be specified clearly and precisely.
- Policy coherence. The objectives of regulation should be consistent with and supportive of the broader and more fundamental economic, legal, and social objectives of the Community.

**564** WIK-Consult, *The Evolution of the Regulatory Model for European Postal Services* (Jul 2005).
**565** Including three High Level Group studies for the European Council: High Level Group (chaired by D. Mandelkern), *Mandelkern Group on Better Regulation: Final Report* (2001); High Level Group (chaired by André Sapir), *An Agenda for a Growing Europe: Making the EU Economic System Deliver* (2003); and High Level Group (chaired by Wim Kok), *Facing the Challenge: The Lisbon Strategy for Growth and Employment* (2004).

- Necessity and proportionality. Regulation should introduce the least deviation from the rules of the normal commercial market necessary and proportionate to achievement of policy objectives agreed for the sector.
- Market transparency. Regulation should foster transparency that facilitates the operation and governance of selected markets to the maximum extent consistent with sound economics and the commercial rights of operators.
- Administrative fairness. The administration of regulation should be impartial, objective, equitable, non-discriminatory, informed, reasoned, and balanced with respect to the costs and benefits borne by affected parties.
- Competency. Regulation should be administered by governmental bodies that are competent to address the issues presented and as close as possible to affected parties.
- Legal certainty. Regulatory measures should be as clear, simple, and stable as possible.

The broad thrust of these seven principles is to empower the user in both an economic and a governmental sense. These principles protect the user as economic actor by insisting upon his or her right to the choices of a normal commercial market as much as possible. Where choice is unavailable, these principles protect the user as citizen by requiring considered and transparent government regulation.

## 4.2 Future definition and regulation of universal service

### 4.2.1 A more flexible definition of universal service

The original Postal Directive described the essence of universal postal service as a set of postal services —

> encompassing a minimum range of services of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location in the Community.[566]

The Directive went on to specify minimum conditions that all Member States should meet in defining universal service for their Member States. These conditions — items to be delivered, frequency of collection and delivery, etc. — were necessarily based on what was generally considered to be the minimum appropriate level of universal postal service when the Directive was prepared. Specifically, the economic research underlying the Directive reflected the state of postal services in the EU-12 Member

**566** Directive 67/97, Recital 11.

States in 1988.[567] In 1988, the mail volume per capita for the EU was about 243 items and in 1990 about 260. Only 2 Member States (EL, PT) had less than 100 items per capita. By the time the Postal Directive was adopted in 1997, three more Member States (AT, FI, SE) had joined the EU. All three had high-to-average volumes of mail per capita.

Market and political developments since 1997 raise serious questions about the continuing appropriateness of the specific set of minimum characteristics for universal service established by the Postal Directive. Since 1997, the European Union has been expanded to include 13 new Member States in which the demand for postal services is only about *one-fifth* that of the EU-12 Member States in 1988. Because advanced electronic communications are replacing paper-based communications, these Member States will likely never require the level of letter post services considered normal and appropriate in the EU-12 Member States in the late 1980s. Indeed, as shown in Chapter 3, demand for letter post services is declining in the older Member States as well. In the Western Member States (AT, BE, DE, DK, FI, FR, IE, LU, NL, SE, UK, IS, NO), the most industrialised Member States, by 2011 the number of letter post items per capita had fallen to about the same levels existed in the EU-12 in 1990. In the less developed Southern Member States (CY, EL, ES, IT, MT, PT), the number of letter post items is only about *one-third* that of the EU-12 Member States in 1988 and declining.

In light of such figures, it must be asked whether the Postal Directive should continue to require the Member State to guarantee levels of universal postal services that were considered essential in 1997 (based largely on data from 1988)? In the Southern and Eastern Member States, it is apparent that there is a risk of requiring investment in postal services that is substantially exceeds the future needs of society. Even in the Western Member States, reduction in paper-based communications is so rapid that the need to sustain the 1988 level of universal postal services is vanishing. At the extreme, Denmark in 2012 has only about *one-quarter* as many letter post items per capita as it did in 1988 (123 versus 434). The net cost of sustaining the level of postal services traditionally available in the western European Member States will become prohibitively expensive. Moreover, to require Member States to sustain large investments in paper-based communications services is at cross purposes with the EU's commitment to encourage widespread digital communications technologies.[568] Member States will, in effect, be required to subsidize an older communications technology to the detriment of newer communications technologies. Then, too, one must also take into account the substantial economic and social costs of eventually downsizing larger-than-needed postal systems in the future.

Moreover, any revision of the universal service provisions of the Postal Directive must look far in the future. A legally binding universal service enshrined in an EU-wide

**567** European Commission, *Green Paper on the Development of the Single Market for Postal Services*, COM/1991/0476 (11 Jun 1992), pp. 67-68, 273.

**568** See European Commission, *A Digital Agenda for Europe*, COM(2010) 245 (26 Aug 2010).

directive will shape the development the postal sector and related sectors for many years. What common principles relating to universal postal services will be appropriate for (current and future) Member States in 2025 or 2030? Given the wide variation in the levels of postal services in Member States today, the rapid and unforeseeable changes in communications technologies, and the different attitudes towards and development of electronic communications among the Member State, it seems to us the EU must move away from the one-size-fits-all-and-always-will approach reflected in the current Directive. Member States will need greater discretion in determining the scope of the universal service obligation. How can this be accomplished?

*Universal service defined as a set of general principles*. One approach could be to retain the essential objectives of universal service while allowing Member States flexibility in determining how to meet these objectives. The recital from the original Postal Directive quoted at the beginning of this section offers one such a general statement of principles that could be used as starting point: 'encompassing a minimum range of services of specified quality . . . at an affordable price for the benefit of all users, irrespective of their geographical location in the Community'. Each Member State could then develop a definition of universal service consist with these objectives while, in the words of the Third Postal Directive, 'respecting the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market.'[569]

Different observers will have different views on the fundamental principles that universal service should meet. In our view, the essential attribute is ubiquity, i.e., all citizens should have access to universal postal services on more or less the same terms irrespective of their geographical location. Except in extraordinary circumstances, no citizen should be unable to access a universal postal service of acceptable quality at an affordable rate. What constitutes acceptable quality and affordable rates should be determined by the needs of most users not by government fiat. That is, the state should not mandate or underwrite a 'gold-plated' level of universal postal service that exceeds the needs of most users nor subsidise the prices paid by most users. Rather, the state should 'fill in the blanks', if any, so that no citizen is left out.

A possible formulation of this concept of universal service as ubiquitous service is found Article 3 of the universal service directive for electronic communications: 'Member States shall ensure that the services set out in this Chapter are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.'[570] By focusing on the principle of ubiquity, a revised universal service requirement could allow

**569** Directive 2008/06, Recital 23.

**570** Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), OJ L108, 24 Apr 2002, p. 51. It should be noted that Article 3 of the Universal Service Directive only stakes out the overall parameters of universal service. It is followed by additional provisions that specify the obligations of Article 3 in greater detail. We would expect a revised Postal Services Directive to follow a similar approach.

each Member State to adjust the overall level of universal postal service to suit the changing needs of its citizens while ensuring all EU citizens an EU-wide postal system that is geared to the needs of each Member State.

*Trigger mechanisms*. A second option could be to allow Member States authority to modify the specific requirements of Article 3 of the Directive based upon the occurrence of specific conditions such as:

- the volume of letter post mail, or total mail, per capita falling below specified minimum level; or
- the net cost of universal service exceeding a specified percentage of the cost of universal service.

A trigger-based approach has the advantage of maintaining the original concept of the Postal Directive while also allowing for change in the face of developments unforeseeable in 1997. Nonetheless, trigger mechanisms require a degree of foresight that may be incompatible with the pace of change in the sector. For example, it may appear plausible to suppose that an average daily volume of 200 letter post items per capita should sustain 5-day delivery in 2025 just as it did in 1990 or 2000, but this may not be the case as the nature and urgency of mail shifts. Delivery frequency is closely related to the urgency of mail. If all mail in 2025 is non-urgent, then a 2-day per week delivery frequency might be more sensible and 5-day delivery quite wasteful. Such considerations illustrate the difficulty of defining a trigger that operates in an unforeseeable future environment without unintended consequences.

As a further refinement, use of 'flexible triggers' might be considered. The Directive could specify the parameters of the trigger while allowing Member States to set the quantity for the trigger depending on national circumstances. For example, the Directive could require all Member States to establish a minimum routing time sufficient to allow citizens to communicate regularly and reliability with one another taking into account alternative methods of communication and the cost of maintaining different channels of communications.[571]

### 4.2.2 Reducing price/service regulation of universal services

A cardinal principle in the set of 'sound regulatory principles' identified in the 2005 study noted above was the 'principle of necessity and proportionality'. This principle was formulated as: Regulation should introduce the least deviation from the rules of the

**571** Compare Article 4(2) of the Universal Service Directive for electronic communications which states that 'The connection provided shall be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility'. Members then determine the 'data rates' taking due account of specific circumstances in national markets.

normal commercial market necessary and proportionate to achievement of policy objectives agreed for the sector.[572] This principle was repeatedly invoked in the 1992 Postal Green Paper[573] and is embodied in several provisions of the Postal Directive (e.g., Articles 4, 7, 9). Indeed, it may fairly be said that the principle of necessity and proportionality not only a 'sound regulatory principle' but a legal requirement of the Treaties.[574]

Rapid evolution in the EU postal services market — in part fostered by the liberalisation of the Third Postal Directive — now calls into question whether the regulation of universal postal services required by the Postal Directive is consistent with the principle of necessity and proportionality. For universal services, the Postal Directive requires regulatory controls for prices and service quality. Member States must ensure that the tariffs for *each* universal service are cost-oriented, transparent, non-discriminatory. In addition, quality of service targets must set for *each* universal service and service performance monitored. At the same time, however, the Third Postal Directive added the possibility that a Member State could ensure universal service by relying on 'market forces'. The possibility that USPs and postal operators may voluntarily provide universal services has been enhanced by increased competition. Not only has the reserved area been terminated but letter post services are now facing tough competition from electronic communications. In most Member States the NRA recognizes it is in the commercial self-interest of the USP to supply a basic level of universal service to the vast majority of the country. In reality, with the exception of a few Member States, the risk of persons lacking basic universal service appears confined to relatively small populations living in thinly populated rural areas.[575]

Is it necessary and proportionate for the Postal Directive to require NRAs to regulate the prices and service quality of universal postal services which, in the judgement of the NRA, will be provided satisfactorily without regulatory intervention? In our view, the answer to this question is two-fold. First, where a universal service provider lacks market dominance, the NRA should rely on the choices of users ('competitive forces') to control prices and service quality, provided that prices and service quality remain above the minimums established by the universal service guaranteed by government (see preceding section) The market is more likely to find the best long term solution than the NRA. Second, where the universal service provider has market dominance, the NRA needs to consider whether it can rely upon the self-interest of the USP ('market forces')

---

**572** WIK-Consult, *The Evolution of the Regulatory Model* (2005), p. 25.

**573** See, e.g., European Commission, *Green Paper on the Development of the Single Market for Postal Services*, COM/1991/0476 (11 Jun 1992), p. 54. ('Firstly, it should be demonstrated that the same objectives could not be met by less restrictive means. Secondly, the scope of the special or exclusive rights must be as small as is needed to achieve the objectives (this being known as the rule of proportionality)').

**574** Article 5(1) TEU states that 'The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality'. Article 5(4) TEU explains that 'Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties'.

**575** See section 2.5.2, above.

to provide services which exceed the requirements of the government's guarantee of universal service. For example, if the NRA can reasonably expect that the USP will provide appropriate services at appropriate rates for large business customers, then the NRA might limit its regulation to ex post rate controls. If, on the other hand, the NRA is concerned that the USP will take advantage of single-piece users by raising rates above costs or reducing service quality to inappropriate levels, then the NRA may reasonably conclude that ex ante regulation is required for single piece universal services.

As described in section 2.5.1, above, Member States are gradually adopting a more limited definition of universal service, one that is more focused on needs of individual users. Member States are thus focusing regulation on a more limited range of services. In the UK, the NRA, Ofcom, has taken this concept a step further by adopting price controls for non-priority ('second class') single-piece letters but not for priority single-piece letters.[576]

In conclusion, in light of the increased reliance on market forces introduced by the Third Postal Directive and the increased competition that USPs face from other providers of postal services as well as electronic communications, we believe that a Member State's obligation to regulate the prices and service quality of universal services should be limited to services that are provided under conditions of market dominance. Even for market dominant products, the NRA should consider 'light-handed' ex post regulation of prices and service quality where it can reasonably rely upon the market forces (i.e., commercial self-interest of the USP) to ensure the provision of universal services which fulfil the state's guarantee of universal postal service.

### 4.2.3 Proportionate use of designation to ensure universal service

As described in Chapter 2,[577] many Member States have designated the public postal operator to be the USP for the entire national territory even though most NRAs believe that only a small minority of users risk loss of universal service — i.e., postal services that fail to meet the minimum criteria of the universal service obligation — if postal operators are left to the incentives of market forces. The notable exception to national designation is Germany, which has excellent postal service throughout the national territory even though the NRA has not designated a USP for any portion of the country. It thus appears that in many Member States the public postal operator is designated as the USP in markets in which it is, in fact, providing essentially the same services at the same prices that it would provide without designation.[578]

---

**576** At the same time, Ofcom considers that priority single-piece letter is a universal service product and has established quality of service standards for it. United Kingdom, Ofcom, *Securing the Universal Postal Service: Decision on the new regulatory framework* (27 Mar 2012), pp.129-30, 205-07, Annexes 6, 7.

**577** Section 2.5.2, above.

**578** This conclusion follows from the observation that USPs would continue to supply a basic level of universal service to the vast majority of the country without the universal service obligation. If a USP is

What is the risk of over-use of designation procedures? In *TNT Post UK Ltd*, Advocate General Kokott of the Court of Justice of European Union explained the legal effect of designation as a USP in the following terms.

> 62. The essence of the universal service guaranteed in the public interest by Royal Mail is that all users are offered a certain range of postal services at all points in their territory at a fixed tariff. *Royal Mail is, in particular, obliged* to provide a set number of access points (pillar boxes and post offices) from which the postal items are collected at least once every working day. It must deliver all permitted postal items at a reasonable and uniform price to every address in the United Kingdom and may not, for example, refuse to convey items to remote areas or to do so only at an increased price. Finally, post must be delivered on every working day to all private households and business customers.
>
> 63. *TNT is not obliged* to offer comparable services. *The principle of fiscal neutrality therefore categorically does not require that TNT's and Royal Mail's transactions be treated equally for tax purposes.* It may indeed be the case that TNT provides some services which are identical to those of Royal Mail, such as, for example, the collection and sorting of postal items. However, *the tax privileged universal service consists precisely in providing a public postal network as a system* of infrastructure facilities and services of specified quality at a particular price. Consequently, *the assessment of the comparability of the transactions hinges not only on the comparison of individual services, but on the fact that they are part of a comprehensive range of provision offered by the public postal network.*[579]

Thus, if postal operator A is competing with post office B in a market and postal operator A is *obliged* to provide its services as the universal service provider whereas postal operator B is not similarly obliged, then the law does not regard postal operators A and B as having the same legal status. Yet if two competitors do not need to be treated equally in the application of tax law, then it would seem that the same rationale could be used to justify different application of other laws (e.g., customs, environmental regulations, transport regulations, employment laws). Indeed, historically, the customs law has likewise been applied differently to universal postal operators and competing postal operators, seemingly based on a similar concept of a difference in legal status.[580] Designation of a postal operator as a USP thus has potentially profound

providing a service which is superior to the basic requirements of the universal service obligation, then it is presumably doing so voluntarily and would continue to do so without the obligation.

**579** Case 357/2007, *TNT Post UK Ltd v. The Commissioners of Her Majesty's Revenue & Customs*, Opinion of Advocate General Kokott, [2009] ECR 3025, paragraphs 62-63. It should be kept in mind that this case deals with the Postal Directive prior to amendment by the Third Postal Directive. It is possible that the Advocate General may have interpreted the implications of designation somewhat differently in the revised context of the current Postal Directive.

**580** See section 2,2,6, above.

implications for full market opening. If two competitors are not equal before the law, then there can be no 'level playing field' and no true 'full market opening'. The successful postal operator will not necessarily be the one that provides the best services and the best prices but may be the one that benefits from the most favourable law.

If designating a postal operator as a USP exempts the USP from equal application of the laws, then the logic and purpose of the Third Postal Directive appears to require that designation should be used sparingly so as not to hinder equal competition to an unnecessary degree. Indeed, the principle that designation should be used proportionately — that is, only to the extent objectively necessary to ensure universal service — is, we believe, already strongly indicated in the Third Postal Directive already. Article 4(2) says specifically that designation shall be 'based on the principles of transparency, non-discrimination and proportionality'. As noted in Chapter 2, Recital 23 obliges Member States to make a reasoned choice in deciding whether to rely upon market forces, designation, or public procurement as the means to ensure universal service.[581] Article 7(1) prohibits the granting of 'special rights for the establishment and provision of postal services', a prohibition that would be meaningless if Member States were free to adopt different laws for USPs and non-USPs.

Moreover, the possibility that a USP may be granted special legal treatment in competitive markets in order to, in some sense, compensate the USP for the burden of providing universal services in other markets would defeat a central accomplishment of the Third Postal Directive, transparency in the cost of universal service. Under Article 7(3), Member States may compensate designated USP(s) for the unfair financial burden of providing universal service by either of two methods: use of general public funds or creation of a compensation fund. Alternatively, Member States may contract with postal operators to provide universal services using public procurement. If, in addition, Member States may support universal service by granting USPs preferential legal status in competitive markets, then — as with a reserved area — the actual economic cost of universal service is obscured.

In practice, Member States have not implemented the principle of proportionate designation in transposing the Third Postal Directive. All Member States except for Germany have designated the public postal operator or its corporate successor as the USP for the entire national territory. Nonetheless, the principle of proportionate designation appears to be the best way to reconcile the legal implications of designation with the goal of full market opening. For the future, the European Parliament and Council may wish to consider adding an explicit proviso that designation may only be used where there is a reasonable and objective risk that no postal operator will provide a specific portion of the universal service on terms that meet the basic criteria of universal service. Alternatively, the concept of designation might be defined in a more

**581** Section 2.5.2, above.

limited manner to provide that designation does not imply any difference in the application of laws to competing postal operators unless and to the extent that the NRA finds, based on objective evidence, that such special legal treatment is necessary to sustain universal service.

## 4.3 Regulation of postal services outside the scope of universal services

### 4.3.1 The case for regulation of postal services outside the scope of universal services

The Postal Directive already provides for NRA jurisdiction over non-universal postal services in three areas: complaints, statistics, and the regulatory accounts of USPs. Article 19 requires Member States to ensure that all postal operators, not only universal service providers, maintain certain measures to protect the rights of users. Article 22a requires all postal service providers to provide statistical information to the NRA. Article 14 provides that USPs must account for common costs incurred in providing universal and non-universal postal service. NRA regulation of these aspects of non-universal services do not seem objectionable.

In addition, while rising competition within the universal service area implies that active regulation of universal services may be reduced, the accompanying reductions in the universal service obligation imply that NRAs may need to take a more active — or more clearly defined — role in the regulation of non-universal services. In all Member States, USPs have achieved positions of market dominance in bulk postal services as a result of the reserved area and other privileges associated with designation as the universal service provider. In the early days of the Postal Directive, bulk services were generally considered within the universal service obligation[582] and therefore subject to provisions which limited potentially anticompetitive behaviour (such as requirements for transparent, non-discriminatory pricing). As bulk postal services have become excluded from the universal service obligation in several Member States, the NRAs' authority to control pricing in bulk postal markets has been called into question.

An example will help to clarify the issue. In most Member States, the incumbent USP faces little effective competition from other end-to-end postal operators in the distribution of bulk letters.[583] An incumbent USP or Member State may be able to block new entry into a substantial portion of the postal sector by denying access of elements of the postal infrastructure, or denying competitors non-discriminatory access to downstream services, or employing other familiar anticompetitive tactics (such as loyalty programs, selective pricing, exclusive arrangements). A similar situation could

**582** The first Main Developments report highlighted the Netherlands as the only Member State that clearly excluded bulk services from the universal service obligation. WIK-Consult, *Main Developments in the European Postal Sector* (2004), pp. 24-36.

**583** Section 3.2.2.1, above.

arise in the provision of direct mail or bulk parcel services. Should provisions of the Postal Directive which protect fair competition in such cases be determined the shifting definition of universal services? Since a primary objective of the Postal Directive is to promote and protect ‘full market opening’ in postal services, the answer would seem to be ‘no’.

On the other hand, is it fair and reasonable to subject USPs to regulation of non-universal services that would not be imposed on non-USPs providing similar services? Although this is fair question, several considerations suggest that it may be appropriate for the NRA to exercise limited authority to prevent anticompetitive conduct by a USP that is market dominant.

- First, the State may be deemed morally obliged to act more proactively to prevent abuse of a market dominant position which it has created. Where the USP enjoys a market dominant position in traditional document or parcel markets, it is almost always because of the USP has inherited a position of market dominance from a postal administration that was granted special and exclusive privileges.

- Second, the practical reality may be that ex post enforcement of the competition laws by the NCA is insufficient to maintain competition. Allocation of common costs in the postal sector is extraordinarily difficult. The NRA is much better placed than the NCA to recognize some types of anticompetitive conduct and develop effective remedies before competition is foreclosed. The economies of scale in the postal sector are so great that once a competitor is forced out of business, enforcement of the competition rules may punish the abuse but remain powerless to resurrect the lost competitor.

- Third, market dominant non-universal services are frequently produced jointly with market dominant universal services. The market dominance which the USP may be able to exploit in the non-universal service sector may thus closely relate to regulation of universal services. Where a Member State is, in some degree, ensuring and sustaining universal services, it may be indirectly sustaining the USP non-universal services as well.

In light of such considerations, it appears plausible to suggest that provisions of the Postal Directive which are designed to protect fair competition should not be limited by the scope of the universal service obligation. At the same time, however, as in the case of universal services (discussed in the previous section), it seems to us that such controls should limited to regulation of *market dominant* postal services.

### 4.3.2 Extension of competition protection provisions to postal services outside the scope of universal services

As a first step, it appears that three provisions in the Postal Directive which protect fair competition in the universal service area could reasonably be made applicable to market dominant postal services outside the scope of universal service as well. All involve an expertise in postal economics that is particularly within the competence of the NRA.

- *Non-discriminatory access to postal infrastructure*. Article 11a of the Postal Directive requires Member States to provide 'transparent and non-discriminatory' access to the postal infrastructure 'whenever necessary to protect the interest of users and/or to promote competition effective competition'.[584] It appears reasonable to extend this provision to non-universal services as well as universal services. The benefits to society — more effective competitive and more efficient parcel delivery — would appear to be similar in both cases.

- *Non-discriminatory access to downstream market dominant services of the USP*. Article 12, indent 5, of the Postal Directive requires Member States to ensure transparent and non-discriminatory access to special tariffs (such as for services for businesses, bulk mailers, or mail consolidators).[585] Non-discriminatory access promotes effective competition in the upstream market, whereas discriminatory access conditions may allow the market dominant delivery service provider to project its market dominance into the upstream market as well.

- *Accounting controls*. Article 14 authorises the NRA to require a USP to maintain accounts in sufficient detail in order to allow the NRA to ensure that prices for universal services are cost-oriented and non-discriminatory. Cost-oriented prices necessarily prevent anti-competitive pricing behaviour. Article 14 already requires the allocation of *common costs* to non-universal services.[586] To control anti-competitive pricing of market dominant non-universal services, NRAs need to be able to require complete cost accounts for market dominant postal services outside the scope of universal service.

**584** See section 2.2.3, above.
**585** See section 2.2.4, above.
**586** Postal Directive, Article 14(3)(b)(iv) provides that the accounts USPs should allocate *common costs* so that 'common costs, which are necessary for the provision of both universal services and non-universal services, shall be allocated appropriately; the same cost drivers must be applied to both universal services and non-universal services.' This provision does not, however, explicitly provide for the allocation of *non-common* costs of non-universal products so that, under the current Article 14, the NRA may not be in a position to apply the principles of Article 12, indent 5, to non-universal products.

### 4.3.3 NRA authority to protect competition

While the measures described in section 4.3.2 above may thwart some types of anticompetitive activities, they do not address the full range potential anticompetitive conduct. In particular, experience indicates there is a genuine risk that incumbents may use loyalty rebates and similar anticompetitive pricing incentives to exclude or hinder competition.[587] And in cross-border markets, price-fixing and market allocation agreements are the norm.[588] Should the NRA have broader authority to prevent anticompetitive activities by USPs in the provision of non-universal services when the USP is market dominant?

Article 22 of the Postal Directive opens the door for Member States to give the NRAs a significant role in enforcing the competition rules with respect non-universal as well as universal services.

> 1. . . . Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law . . . on matters of common interest.
>
> 2. The national regulatory authorities . . . may also be charged with ensuring compliance with competition rules in the postal sector.

Under EU law, where an infringement of the competition rules has been determined, the competition authorities have broad powers to impose whatever fines or structural measures are deemed necessary to bring the infringement to an end:

> Where the Commission . . . finds that there is an infringement of [the competition rules], it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end.[589]

The present study suggests that Member States have done a fairly good job of integrating regulatory and competition law enforcement. In 8 Member States (DE, EE, EL, LU, LV, NL, PL, UK), the NRA can itself enforce the competition rules in the postal sector.[590] In most other Member States there seems to be a significant level of coordination. Nonetheless, in most Member States, enforcement of the competition rules in case of anticompetitive behaviour remains a matter of persuading a busy and

**587** See section 3.3.1, above.
**588** See section 3.4.8, above.
**589** Council Regulation No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1, 4 Jan 2003, p. 1, Article 7.
**590** Section 2.1.5.7.

relatively inexpert NCA to take action. This is a difficult threshold for any private party to overcome.

Under these circumstances, the Postal Directive might reasonably adopt a middle ground procedure that stops short of requiring Member States to vest their NRAs with full authority to enforce the competition rules in the postal sector yet empowers NRAs to preserve competition where a USP has already been found to have violated the competition rules in similar circumstance or where the NRA has determined that there is a prima facie evidence of a new infringement of the competition rules. By way of illustration, one possible formulation of such authority might be as follows:

> Where Member States choose not to charge the NRA with ensuring compliance with competition rules in the postal sector, they should ensure that NRA can, in cases of urgency due to the risk of serious and irreparable damage to competition, on the basis of a prima facie finding of infringement of the competition rules or a history of past infringements for which there is a plausible risk of reoccurrence, order such interim measures as may be objectively necessary to preserve existing competition.[591]

Vesting the NRA with such interim authority may be justified by two salient points. First, as noted above, once competition in postal markets is snuffed out, it will be extremely difficult to rekindle. Second, at least in the short term, the NRA is likely to have a far better understanding of postal economics and postal markets than the NCA. At a minimum, the NRA should have the authority to preserve the status quo pending a full review by the NCA. The crux of this option, it should be noted, is that NRA would be limited to the emergency implementation of competition law concepts. The NRA would not be authorised to exercise general regulatory authority over non-universal services in the same manner as it may over universal services (see next section).

**591** This formulation closely follows the authority of competition authorities to order ‘interim measures’ in competition cases. Council Regulation No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1, 4 Jan 2003, p. 1, Article 8. Interim measures must be limited in time, but they may be renewed as necessary.

### 4.3.4 Regulation of postal operators with significant market power (SMP)

The EU regulatory framework for electronic communications adopted in 2002[592] goes further in imposing regulatory controls on non-universal services where the service provider is deemed to exert 'significant market power' (SMP). The concept of SMP is generally aligned with the antitrust concept of 'market dominance'.[593] Where the NRA concludes that a service provider possesses SMP and the specific obligations imposed under electronic communications directives 'would not result in the achievement of the objectives' set out in the Framework Directive, then the NRA 'shall impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market.' The permissible scope of these new regulatory obligations is described as follows:

> Obligations imposed under paragraph 1 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in [Framework Directive]. The obligations imposed may include requirements that the identified undertakings do not charge excessive prices, inhibit market entry or restrict competition by setting predatory prices, show undue preference to specific end-users or unreasonably bundle services. National regulatory authorities may apply to such undertakings appropriate retail price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices on comparable markets, in order to protect end-user interests whilst promoting effective competition.[594]

Although the directive refers to such measures as a 'last resort',[595] observers have commonly characterized the resulting regulatory regime as 'never ending'.[596]

---

**592** The major electronic communications directives relevant in this study are (1) Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L108, 24 Apr 2002, p. 108; (2) Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), OJ L108, 24 Apr 2002, p. 51; and (3) Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, OJ L249, 17 Sep 2002, p. 21.

**593** Directive 2002/21 (Framework Directive), Article 14(2) provides, 'An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers'.

**594** Directive 2002/22 (Universal Service), Article 17(2). These obligations refer primarily to retail services. See also Directive 2002/19/EC of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), OJ L108, 24 Apr 2002, p. 7, Articles 8 to 13 for a somewhat less open-ended list of possible obligations that maybe imposed on access to electronic communications networks.

**595** Directive 2002/22 (Universal Service), Recital 26.

**596** Alexandre de Streel, 'Current and future European regulation of electronic communications: A critical assessment', *Telecommunications Policy*, 2008, vol. 32, issue 11,. This paper, by one of the authors of the present study, provides a considered analysis of strengths and weaknesses of SMP regulation in the electronic communications sector.

In the Netherlands, in December 2012, the government proposed an amendment to the postal law that would apply a version of SMP regulation to postal services. The Dutch proposal was motivated by concern over the decline in letter of volumes carried by competitors to PostNL and reduction in their numbers.[597] The postal services market is perceived as especially vulnerable. The Dutch proposal is intended to give the NRA authority to protect competition and the interests of users without the need to demonstrate that the postal operator with SMP had abused a dominant position or even to make the prima facie case required by interim measures under the competition law. The NRA will be empowered to act based on finding that the postal operator could take anticompetitive actions which should be prohibited. The NRA is further empowered to impose obligations designed to protect the interests of users, such as ex ante control of rates to ensure that they are unbundled, transparent, non-discriminatory, and cost-oriented and guarantees of service quality.[598]

In our view, the present survey does not support the need in the foreseeable future for an EU-level requirement that would oblige Member States to impose SMP regulation of non-universal postal services. The pros and cons of SMP regulation may be seen more clearly by looking separately as the two major submarkets of postal services: (1) letter and document delivery services (i.e., paper-based communications) and (2) parcel delivery services.

The *submarket for delivery of letter and document* communications is declining rapidly, although it is still significant, both in economic and social terms. In all Member States, single-piece letters and letter-sized documents are included in the universal service. They constitute a small fraction of all letter post items, generally less than 15 percent. No one has suggested (and this report does not recommend) any change in the inclusion of single-piece letters and documents as an obligatory element of the universal service throughout the EU. Thus, universal collection and delivery of single-piece letters and other letter-sized documents is assured. Under the Postal Directive, Member States may also extend the universal service obligation to include newspapers, magazines, and periodicals. Many have done so, although many such publications are rapidly moving to electronic communications. What remains in the letter and document submarket is specialized postal services for bulk letters and direct mail. If a Member States chooses not to include such services in the universal service obligation, is there a need to subject them to SMP regulation in order to control abuse, or inadequate performance, by market dominant providers? This survey has not uncovered significant evidence of excessive pricing or poor service in the bulk letter and direct mail submarkets. If anything, prices for such services relative to prices for single-piece services have decreased with liberalisation. Senders of bulk letters and direct mail

**597** See Case study 3-5, Consolidation in the Dutch mail market, above.

**598** Netherlands, House of Representatives, Amendments to the Postal Act 2009 to introduce ex ante monitoring a post transport with SMP: Explanatory Memorandum [Wijziging van de Postwet 2009 ter invoering van ex ante toezicht op een postvervoerbedrijf met aanmerkelijke marktmacht: memorie van toelichting], 33 501 Nr. 3 (10 Dec 2012), p. 7.

appear have significant bargaining power with providers of postal services due in part to the possibilities of migration to electronic communications. Providers of postal services appear to have a strong commercial interest in providing good quality bulk letter and direct mail services even when they are market dominant. On the other side of the equation, experience in postal regulation in some Member States and with the electronic communications directives suggests there can be costs as well as benefits to vigorous regulatory intervention. On balance, while it appears that additional vigilance against anticompetitive behaviour may be appropriate (see preceding section), there does not appear to be a strong case for obliging Member States to introduce SMP regulation of non-universal services for paper-based communications.

Turning to the submarket for parcel delivery services, an EU-level obligation to introduce SMP regulation appears still less called for at this time. Again, no one suggests (and we do not recommend) that single-piece parcel services should be removed from the EU-wide universal service obligation. This question of SMP regulation relates only to the development of commercial parcel services. At present, competition in parcel services appears to be 'intense' or 'sustainable' in almost all Member States. Historically, competitive commercial parcel delivery services have developed extraordinarily over the last two or three decades in the business-to-business sector and are expanding into the business-to-consumer sector as demand warrants.[599] Indeed, parcel services appear to have developed more fully in Member States which have not included bulk parcel services in the universal service obligation (e.g., FR, IT, NL, SE, UK). In the United States, competition is strong in the parcel and express services despite market consolidation and an absence of price and service regulation. In sum, the available evidence suggests that, in general, competitive markets subject to vigilant antitrust oversight but unfortified by SMP regulation, will suffice to promote adequate and innovative commercial parcel services.

In sum, mindful of the principle of necessity and proportionality, we believe that a EU-level obligation for Member States to introduce SMP regulation for non-universal services is not supported by current evidence. Of course, this is not to suggest that changed circumstances may not require reconsideration of the need for SMP regulation in the future. Moreover, certain issues specific to cross-border markets are discussed in the section 4.4 below.

**599** Section 3.3.2.1, above.

### 4.3.5 Which market segments benefit from competition, which rely on regulation?

This section discusses summarily for which market segments we would hope for effective competition to emerge, and for which markets we observe structural impediments for competition. Markets where such structural problems exist are likely candidates for more intense regulation in the future, while policy-makers and regulators should rely on competition rather than regulation in more competitive markets.

In *domestic letter post markets* in most Member States, even after full market opening, competition has not yet emerged for different reasons. Generally, shrinking mail markets due to economic recession and changing communication behaviour per se limit the attractiveness of postal markets for new entrants and potential investors, particularly in Western and Southern Member States. In Member States where the is some competition, the profitability of competitive mail operators appears marginal and their market shares are stagnating. Only in some Eastern countries competition is emerging more dynamically. This development is important because competition promotes the evolution of these still underdeveloped mail markets (in terms of per capita volume), and because the universal services providers sometimes appears to fail in to meet the needs of their customers. Overall, we conclude that there are important barriers to competition (economic and/or regulatory) in all domestic letter post markets, the incumbents' market dominant positions are likely to remain.

The *cross-border letter post market* is still dominated by universal service providers from other countries that compete for customers with large cross border volumes. There are very few private operators who are independent from other USPs. Moreover, competition focuses mainly on business customers located in larger cities or densely populated regions due to the fact that cross-border service providers do not maintain a nationwide access network but typically collect the mail directly at the customer's premises. Finally, there is still a large number of (smaller) member States where none of the large cross-border service providers for letter post is active (e.g. in the Eastern Member States). USPs are very likely to remain dominant in providing single-piece cross-border letters, but appears possible that market segments for bulk mail can be more competitive.

For *parcel and express services* the situation is more ambiguous: These services were never subject to legal monopolies and are therefore more competitively organised than letter post services. While domestic and cross-border shipments between businesses still dominates the revenues, shipments to consumers (B2C) are dynamically growing in recent years. Parcel and express operators at local, regional, or global level are successfully developing their B2B business with high quality, innovative and customised delivery services. In member States with well-established distance selling and mail order business, some parcel operators specialise in low priced delivery of B2C

shipments (often founded by large mail order companies), notably in Germany, France and the UK. These B2C operators compete with well-prepared universal service providers. Despite dynamic growth in B2C deliveries, this market segment appears less competitive than B2B for the moment. As some B2B operators are working to enter the market for segments for B2C deliveries, however, there is a possibility that the B2C segment may become more competitive in the future. By contrast, there are less offers, and less demand for B2C deliveries in several Member States without a mail ordering tradition (most Southern and Eastern countries). Particularly in these but also in the Western countries parcel and express service provider with traditional focus on B2B are attracted by this dynamically growing market segment. Generally, universal service providers have a first mover advantage in B2C delivery due to their densely, nationwide access and delivery networks. In many Western Member States, the universal service providers have taken advantage of these assets to meet the growing demand in this segment. USPs also enjoy cost advantages as they can combine parcel and mail delivery, at least in rural areas.

An interesting question is whether domestic B2B and B2C segments are actually different markets or should (continue to) be included in the same market for the proposes of competition law and regulation. From an empirical point of view, parcel and express operators cannot identify whether the addressees are ‘consumers’ or ‘businesses’. These operators are more driven by the shipping behaviour of their business customers. As their customers increasingly send goods to consumers (driven by e-commerce), traditional B2B operators started extending their delivery networks to ‘B2C’, but perceive that this change negatively affects their average delivery costs. In reaction to this challenge they are looking for possibilities to reduce average delivery costs. They do this partly by developing innovative delivery solutions. Alternatives to home delivery of parcels are emerging like parcel lockers and, the mostly used option, pick up points in retail outlets. If parcels are delivered to parcel lockers or pick up points this is more similar to the typical B2B delivery than home delivery to consumers. In Nordic countries, consumers are used to pick up their parcels from the next postal outlet, home delivery is more the exception than the rule. From this regard it is very difficult to draw a clear line between B2B and B2C.

Finally, we recommend that NRAs and governments regularly compile market studies and implement a more systematic market observation of parcel and express market in order to assess whether, and exactly in which segments, they can rely on the market to deliver efficient solution without regulatory intervention, and where such intervention may be necessary.

## 4.4 A modern institutional framework for cross-border postal services

The present study, like several previous studies, has found that cross-border postal services are less competitive, more distorted, and less transparent than they should be because of ineffective implementation of the Postal Directive and EU competition rules. Failure of the EU to fully exploit the benefits of fair and open competition in cross-border markets is particularly ironic in light of the fact that anti-competitive behaviour and poor cross-border service were primary incentives for developing the Postal Directive. Relative neglect of cross-border postal policy at Member State level contrasts markedly with the often innovative and thoughtful initiatives of the Member States and NRAs in regulation of national postal markets.

In our view, the fundamental problem lies not so much in a lack of regulatory diligence but in inadequate institutional arrangements. In regulation of cross-border markets, individual NRAs, and even the postal policy officers in individual national ministries, are not well positioned, acting alone, to ensure full implementation of the norms of EU law. NRAs and even ministries lack resources to deal with cross-border policies which are as complex as domestic postal policies but affect only a very small portion of each national postal market. They are also inhibited by unfamiliarity with the potential intergovernmental and foreign policy implications of cross-border postal relations. For the EU to develop and implement a modern legal framework for cross-border postal services, institutions of the EU must assume a larger role in the enforcement of EU law and the coordination of external policies of the Member States.

Reform of the institutional framework for governing cross-border postal markets should be, and can be, aimed at several goals simultaneously. First, and most important, intra-EU/EEA postal markets should become fully open and competitive with cross-border universal services fully protected by the Postal Directive. Second, the exchange of cross-border postal services between the EU/EEA and other industrialized countries should become as open and competitive as possible. Third, EU policies toward developing countries should become better adapted to the realities of the international economy. The EU should continue traditional support for needy developing countries while seeking a more level playing field in postal exchanges with developing countries that are major competitors to manufacturers and e-commerce retailers in the EU. Based on our review of the development of EU postal policy and postal markets, we suggest several initiatives that illustrate steps that could be taken to establish a modern institutional framework for cross-border postal services.

### 4.4.1 Commission notice on the application of the competition rules in cross-border postal markets

In 1998 the Commission issued a *Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services* as a companion to the original Postal Directive. [600] The Notice set out the principles the Commission would follow in applying the competition rules to the postal sector in the wake of the newly adopted Directive. The Notice was relatively non-specific in discussing cross-border issues because the Reims agreements were then under review by Commission. Although the Directive itself has been updated twice, the Notice has not been revisited. Since 1998, not only has the Postal Directive embraced full market opening, but the Commission and the courts have applied the competition rules to a variety of cross-border postal issues.

There remains a wide range of competition issues relating to cross-border services which a new notice could help to clarify. Provisions of the Universal Postal Union relating to terminal dues, inland rates, remail, and ETOEs appear to be inconsistent with competition rules in several respects, yet there remains considerable confusion about the precise extent to which UPU provisions can or cannot be implemented by EU/EEA public postal operators.[601] Then, too, the rise of the EMS Cooperative, the E-Parcel Group (EPG), and the Kahala Posts Group (KPG) reflects an apparent commercial need for public postal operators to develop closer operational ties in order to compete in the cross-border market. At the same time, as the Commission has recognised, commercial cooperation between competitors poses difficult issues under the competition rules.[602]

A new competition law notice that is focused on the particular issues affecting cross-border postal services could facilitate further development of cross-border postal markets both within the EU/EEA and between the EU/EEA and other countries. In setting out guiding principles for application of the competition rules, the new notice should take into account the standards and objectives of the Third Postal Directive and rapid development of the cross-border postal market. Some issues that the notice could address include the following:

- To what extent and under what conditions may postal operators or Member States jointly agree on terminal dues to be charged for delivery of inbound cross-border items (letter post or parcels) received from other EU/EEA Member States? From other industrialized countries? From developing countries? For such agreements, what criteria should be used in interpreting the exemption provision in Article 101(3) TFEU?

**600** Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services, OJ C39, 6 Feb 1998, p. 2.
**601** See section 4.4.8, above.
**602** See European Commission, 'Guidelines on the applicability of Article 101 of the Treaty on the functioning of the European Union to horizontal co-operation agreements', OJ C11, 14 Jan 2011, p. 1.

- To what extent and under what conditions may postal operators or Member States jointly agree on terminal dues that apply different charges for delivery of similar postal items if the difference in charges reflects a distinction between domestic senders, on the one hand, and senders in other EU/EEA Member States, on the other? Senders in different EU/EEA Member States? Senders in other EU/EEA Member States, on the one hand, and senders in other industrialized countries?

- To what extent and under what conditions may postal operators or Member States jointly agree on terminal dues that apply different charges for delivery of similar postal items, or to apply different customs or security procedures, if the difference in charges or legal treatment reflects a distinction between a 'designated operator' (in the UPU sense) and a non-designated operator? Between 'remail' (physical or non-physical) and normal cross-border mail? Between the national office of 'designated operator' (in the UPU sense) and an ETOE?

- To what extent are answers to the foregoing questions affected by whether the services in questions are universal services? Service provided under conditions of market dominance?

- What guidelines and limitations, if any, should apply for cooperation among organizations of public postal operators such as EMS Cooperative, the E-Parcel Group, and the Kahala Posts Group?

- What is the legal relationship between EU competition rules and the acts of the UPU?

### 4.4.2 Effective implementation of Article 13 of the Postal Directive

In the provision of universal services among EU/EEA Member States, there is no apparent reason why postal delivery rates ('terminal dues') should not be as cost-oriented, transparent, and non-discriminatory as rates for the delivery of items received in the national universal service. Nonetheless, fifteen years after it was adopted, Article 13 of the Postal Directive is largely unenforced and apparently unenforceable as currently drafted. Experience suggests that Article 13 could be strengthened in several respects. Some options include the following:

- Require that any charge for the delivery of inbound cross-border universal service items must published before it is legally effective. This requirement could be limited to postal operators appointed under Article 4 or to postal operators providing universal services under conditions of market dominance.

- Require that any charge for the delivery of inbound cross-border universal service items must submitted to the NRA and the Commission in advance of the effective date and that the Commission must, in consultation with the ERGP, provide the NRA with an non-binding advisory opinion on the lawfulness of the

proposed charge under EU law. As a practical matter, this procedure will likely require the Commission and the ERGP to develop guidelines for appropriate terminal dues in advance of specific reference. Again, this requirement could be limited to postal operators appointed under Article 4 or to postal operators providing universal services under conditions of market dominance.

- Same as above but provide that terminal dues rates must be approved by the Commission.

Developing an acceptable procedure for enhanced Commission participation in the review of terminal dues agreements will be difficult, but it should not be impossible.[603] The Framework Directive for electronic communications offers one precedent, but it is aimed at curing a different problem in a different industry. In electronic communications, the Framework Directive seeks to ensure that NRAs will not adopt inconsistent approaches to highly technical issues affecting the provision of electronic communications services generally. In the postal sector, a terminal dues agreement affects only a few per cent of the total market, the cross-border services. Review at the EU-level will be more concerned with prompting NRA decisions than restraining them. And the issues are less technical because the essential question is whether rates established by a terminal dues agreement are reasonably aligned with domestic postage rates, which are already overseen by the NRAs. There should no need for elaborate cost analysis or market definitions. Nor should there be a need for perfect alignment between terminal dues and domestic postage rates. With full market opening and in the absence of controls on bypass, the market will tend to self-regulate. For example, if a USP charges significantly less for the delivery of inbound intra-EU cross-border mail than for similar domestic mail, then large domestic mailers will produce their domestic mail in another Member State and post it back to domestic customers. As the CJEU pointed out in the *GZS* case, controls on 'ABA remail' are needed only so long as terminal dues are not aligned with domestic postage.[604] The Commission has already established a conceptual framework for review of terminal dues agreements in the two Reims II decisions. In these cases, the Commission's analysis focused (1) whether terminal dues rates bore a reasonable relation to domestic rates and (2) whether limits on competition were acceptable. Admittedly, with direct application of Article 101(3) TFEU (the public benefit exception to price-fixing), the Commission's analytical approach will have to be adjusted. However, it is premature to assume that a detailed consideration of Article 101(3) TFEU will needed. In the wake of full market opening, a competition law notice cold clarify the requirements for terminal dues agreements in

**603** Article 7 of the Framework Directive for electronic communications (Directive 2002/12/EC) provides that NRAs in the electronic communications sector must submit decisions with respect to certain topics, such as market definitions, to the Commission in draft form. The NRA is required to 'take the utmost account of comments of other national regulatory authorities and the Commission' before adopting a decision. In exceptional cases, the Commission may require the NRA to withdraw the draft decision.

**604** See section 2.4.8.2, above.

such a manner that the criteria of Article 101(3) TFEU will play a much less significant role.

The bottom line is that the Commission's public reviews of the two Reims II agreements were highly positive contributions to the development of a single EU postal markets consistent with the principles of the competition rules and the Postal Directive. Reliance on the NRAs enforcement of Article 13 of Postal Directive since 2003 has proved far less effective. In the future, the Commission and the NRAs need to work together to develop a new procedure for reviewing multilateral terminal dues agreements at EU-level (at least in so far as they affect market dominant services), one that retains the positive elements of Commission involvement while reflecting the principles of the Third Postal Directive and Council Regulation 1/2003 (implementation of the competition rules).

### 4.4.3 Coordination of the EU positions at the UPU affecting e-commerce

In 2004, the Commission well summarised the need for better coordination of Member State policies in a communication announced a few months in advance of the 2004 Bucharest Congress of the UPU.[605] The communication highlighted three areas of EU policy that the Commission considered particularly affected by acts of the UPU: the internal market for postal services, competition policy, and trade policy, and it articulated several principles that it proposed should guide the positions of EU Member States at the Bucharest Congress.[606] The Commission's communication was well-founded and, in many respects, prescient, but it was issued too late in the long process that culminates in a UPU Congress. At Congress itself, Member States continued to maintain uncoordinated and inconsistent positions that they had developed and presented in the years of preparatory councils of the UPU that preceded the Bucharest Congress.

The next UPU Congress will be held in Istanbul in 2016. Now is the time for the Commission to begin to develop a coordinated position among EU Member States that supports key policy objectives. The most practical approach would appear to be for the Commission to focus on a few issues of particular importance to the future EU postal regulation. The starting point could be the Commission's recent communication on parcel delivery services in cross-border markets.[607] In brief, this communication identified development of e-commerce as a major goal of EU economic policy and the development of a more effective and efficient network of cross-border delivery services as a key ingredient in realizing that goal.

---

**605** See European Commission, *Communication from the Commission to the Council the Universal Postal Union Congress 2004*, COM(2004) 398.
**606** Ibid., paras 21-34.
**607** European Commission, *An integrated parcel delivery market for the growth of e-commerce in the EU*, COM(2012) 698 (29 Nov 2012).

The Universal Postal Union is also deeply engaged in promoting cross-border e-commerce. In some cases, initiatives of the UPU mesh well with the goals of the EU. In other respects, however, the UPU's approach appears to be contrary to the interests of EU providers of e-commerce or the principles of EU law. By coordinating EU Member States' positions at the UPU in so far as they pertain to cross-border e-commerce, the EU will maximize the opportunity for obtaining UPU policies in the 2016 Istanbul Congress that they reflect the long term interests of the EU. Some potential topics for inclusion in a coordinated position include the following:

- *Alignment of terminal dues for small packets with domestic postage rates*. The UPU terminal dues system as it applies to small packets — parcels less than 2 kg — is rife with distortions. Parcels received by EU/EEA Member States from countries such as China and India are often delivered by EU USPs at rates below what they charge e-commerce retailers in their own countries. Still worse, EU mailers effectively subsidise mail order companies from the United States and other industrialized countries. Within the EU/EEA some USPs gain at the expense of others. And while EU Member States subsidise postal operators in developing countries — an outcome that few would object to — the burden of this generosity unfairly falls disproportionately on some EU Member States. Meanwhile, the UPU terminal dues tends to favour the large developing countries instead of the truly needy ones. The EU could develop and advocate a more reasonable and compassionate approach that protects the interests of the EU while decoupling UPU policies from the commercial interests of a few very large public postal operators.

- *A more market-oriented legal framework*. In recent decades, the UPU has increasingly focused on advancing the commercial interests of 'designated operators' (public postal operators) instead of facilitating the flow of cross-border documents and parcels. A commercial purpose is appropriate for an industry association of public postal operators but not for am intergovernmental organization. As repeated studies over two decades have recommended, the UPU needs to clearly separate regulatory and commercial activities. Independence of regulation from commercial interests is been a cardinal principle of the Postal Directive, enshrined in Article 22. In separating CERP and PostEurop, the EU and other European states have already adopted a model reform at the regional level. The Commission could play a beneficial role in coordinating support for efforts by Member States (e.g., France, Germany) to improve separation of governmental and commercial activities at the UPU.[608]

**608** A number of studies have outlined ways to improve separation of governmental and commercial activities at the UPU. See, e.g., WIK-Consult and J. Campbell, *External Dimension* (2010), pp. 163-70; Pricewaterhouse Coopers, *Universal Postal Union: Final report Study of the impact of new market players in the postal sector on the Union and its mission and activities* (2010) (study for the UPU); WIK-Consult, 'Study on UPU Reform: Economic and Legal Perspectives' (4 Aug 2004) (study for the UPU); UPU, Committee 1, 'Study on the legal, regulatory, technological and commercial environment

- *A simplified and globally uniform open network customs regime for low-value e-commerce parcels.* See section 4.6.2, below.

### 4.4.4 Integration of trade policy and cross-border postal services

'Trade in services' has received increasing attention in international trade negotiations in recent years. Ratification of the General Agreement on Trade in Services (GATS) in 1995 was a landmark accomplishment in development of a more system of international trade. In the recent Doha Round of the World Trade Organization (WTO), the EU and US joined other countries in pressing for still further liberalisation of trade in services. In particular, the EU and US advanced a 'plurilateral request', mostly inspired by a previous EU position paper, seeking liberalisation commitments with respect to all competitive postal services. Outside the WTO, both the EU and US have been pursuing bilateral and regional trade agreements that include commitments to liberalize at least the provision of cross-border express services.[609]

With WTO's Doha Round apparently stalled, the EU and US are now entering two sets of trade negotiations in which initiatives to liberalize trade in postal services could figure prominently. The first is the Transatlantic Trade and Investment Partnership (TTIP) negotiations which are aimed at liberalisation of trade between the EU and the US. The second is the Trade in Services Agreement (TISA), a negotiation among 48 countries — counting the European Union as a single country — that represent 70 percent of the world's trade in services.[610] Both sets of trade negotiations appear to offer an opportunity to better integrate cross-border postal services and EU trade policies.

For the EU, the obvious starting point is the March 2006 plurilateral request proposed by the EU and the US in the Doha Round. Since that date, each jurisdiction has adopted legislation which favours a substantially more liberal approach towards governing cross-border postal services. In December 2006, the United States enacted the Postal Enhancement and Accountability Act (PAEA). The PAEA commits the United States to a policy of 'unrestricted and undistorted competition in the provision of international postal services and other international delivery services' and 'a clear distinction between governmental and operational responsibilities' with respect to the governance of such services. PAEA explicitly requires the US government agencies to

> apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to

in relation with the single postal territory principle', 1996.1 C1 Doc 2 (18 Sep 1996); UPU, Study Group of Postal Experts, 'Report on the Management of the Work of the Universal Postal Union, CE 1992 C3 Doc 2a (Jan 1992).

**609** WIK-Consult and J. Campbell, *External Dimension* (2010), pp. 188-202.

**610** As of June, 2013, participants in the TISA include Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Republic of Korea, Switzerland, Turkey, and the United States.

> both shipments by the Postal Service and similar shipments by private companies.[611]

In the EU, the Third Postal Directive and the Modernised Customs Code[612] were both adopted in 2008. In principle, the EU legislation is similar to the US legislation although the EU legislation goes much further in liberalisation of postal services while it is less explicit in terms of equal application of export and import controls.[613]

The joint EU-US approach towards liberalisation of cross-border postal services developed during the WTO Doha Round has thus been reinforced by progressive and substantially similar legislation in both jurisdictions since the Doha Round stalled. Moreover, in both jurisdictions, market developments have followed a similar course. Letter volumes have declined rapidly, exacerbated by an economic recession, while the continuing expansion of e-commerce has highlighted the importance of all types of parcel delivery services. Both the EU and the US are home to highly developed public postal operators and major global integrators.

Given these similarities of law, interest, and commercial capacity, it appears to be in the interest of the EU to seek further liberalisation of cross-border postal services in the context of the TTIP negotiations, especially in policy areas affecting parcel delivery services and e-commerce. Because the UPU Constitution provides that bilateral and multilateral agreements may override provisions of the Universal Postal Convention, the TTIP offers the EU (and US) an opportunity to adopt, before the next UPU Convention takes effect in 2018, a legal framework for bilateral trade in postal services that is more closely aligned to the principles of the Third Postal Directive and US postal law than reflected in provisions of the Universal Postal Convention.[614] Likewise, the EU and the US appear to have a common interest in jointly pursuing liberalisation of postal services in the context of the TISA negotiations, again focusing on parcel delivery services and e-commerce.

---

**611** 39 U.S.C. § 407(a)(2), (a)(2), (e)(2) (2012).

**612** See section 2.2.6, above.

**613** In the EU, the Modernised Custom Code, implicitly requires equal application of the customs laws to public and private postal operators because, unlike the prior Community Customs Code, it does not provide for different customs treatment for ‘postal traffic’. See section 2.2.6, above. In the United States, the postal law explicitly requires treatment *‘in the same manner’* under all import and export laws including customs law. Moreover, the postal law explicitly requires the U.S. Secretary of State to seek non-discriminatory customs treatment from foreign governments: 'the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers’. 39 U.S.C. §§ 407(e) (2012).

**614** Under UPU, 2012 Constitution, Article 8, members of the UPU may ‘may establish Restricted Unions and make Special Agreements concerning the international postal service, provided always that they do not introduce provisions less favourable to the public than those provided for by the Acts to which the member countries concerned are parties’.

## 4.5 Improved application of the competition rules

### 4.5.1. Substantive issues

The three main branches of competition law — prohibition of anticompetitive conduct and agreements, merger control, and state aids control — all have a vital role to play in the continuing development of the postal industry because the sector is naturally oligopolistic (given its economic characteristics) and only recently launched on the difficult course from monopoly to competition.

In the postal sectors, as in other network industries such as electronic communications[615] or energy, restraints against anticompetitive conduct and agreements have had an important role in supporting liberalization and complementing sector regulation to enhance efficiency. Competition law plays a key role in the success of liberalization limiting the ability and incentive of incumbents to foreclose entry in newly opened markets. In several cases in the last three years, incumbents have blocked from introducing anticompetitive rebates which were designed to hinder or prevent efficient new entry. In a few situations, access to elements of the postal infrastructure was required. In the future, the European Commission and NCAs should continue to apply competition law forcefully to ensure that incumbents cannot foreclose entry of as-efficient competitors.

The application of merger rules is also important in the postal sector which is oligopolistic given its economic characteristics such as the economies of scale. In reviewing notified mergers, the Commission should ensure that the level of competition, which is sometimes fragile, cannot be weakened to the detriment of consumers.

A forceful application of the state aids rules is equally important to ensure a level playing field between incumbents and new entrants, but also to ensure that the Services of General Economic Interests (SGEI) are provided in conditions which enable them to fulfil their missions. Incumbents may suffer competitive disadvantage because of higher legacy pension liabilities and may be compensated for those costs. Incumbents, if they have to provide non-profitable SGEI, may also suffer competitive disadvantage and should be compensated for those net costs. State aids control may be particularly difficult in the postal sector because there is a complex relationship between antitrust, regulation and state aids as the *Deutsche Post* pension decision of the Commission illustrated.[616] In the future, the European Commission should continue to apply forcefully state aids rules to ensure a level playing field between all postal players, incumbents and entrants, and that an operator they can only be compensated for the costs imposed by the State which are not borne by the other operators.

---

**615** For an illustration of competition law supporting the liberalization in the telecommunications sector, see A. de Streel, 'Relationship between Competition Law and Sector-Specific Regulation', in L. Garzaniti and M. O' Regan (eds), *Telecommunications, Broadcasting and the Internet: EU Competition Law and Regulation* (2010).

**616** Decision 2012/636 of the Commission of 25 January 2012, *Complaint against Germany for unlawful state aid to Deutsche Post,* OJ L289, 19 Oct 2012, p. 1.

To signal such forceful application of the different parts of competition law and increase legal certainty, the Commission could update its 1998 Notice on the application of competition rules to the postal sector,[617] in particular in three directions. Regarding abuse, the Commission could clarify the treatment of postal rebates and of cost standards in light of the recent case-law, in particular the *Post Denmark* decision of the Court of Justice of the European Union,[618] and its 2008 Priorities Guidelines in Applying Article 102 TFEU.[619] The Commission could also, as noted above, clarify the application of competition rules, in particular Article 101 TFEU, on cross-borders postal services.[620]

### 4.5.2. Institutional issues

Given the need of an extensive application of competition policy and the existence of NRAs with detailed knowledge of the sector and the operators, good governance requires a close collaboration between the authorities in charge of the implementation of competition law and the NRAs. Such cooperation may be vertical between the European Commission and the NRAs. Thus when the Commission investigates an antitrust case, reviews a merger or a state aid, it should closely cooperate with the NRA of the Member State concerned, in particular on all elements which require a detailed knowledge of the industry or its operators (e.g. the costs calculation of the postal operators).

The cooperation should also be horizontal between the NCA and the NRA of a Member State. When an NCA investigates an alleged abuse of dominant position or anti-competitive agreement, it should closely cooperate with the NRA. Such cooperation should be formalized in formal agreements or memoranda of understanding between both authorities, as it is the case in most Member States.[621] One important but difficult issue to be addressed in those agreements is the treatment of confidential information.

---

**617** Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services, OJ C 39, 6 Feb 1998, p. 2.

**618** Case C-209/10, *Post Danmark v Konkurrencerådet,* [2012] ECR I-____.

**619** European Commission, Guidance of 3 December 2008 on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings OJ C 45, 24 Feb 2009, p. 7.

**620** For cross-border services, see section 4.4.1 above.

**621** For possible institutional design ensuring a good cooperation between NRAs and NCAs, see OECD, Regulated Conduct Defence, DAF/COMP(2011) 3, pp. 42-49.

## 4.6 Resolving potential restraints on competition

### 4.6.1 Competitive neutrality in the application of VAT laws

The EU postal services market is significantly distorted by Member State laws that exempt some postal services from Value Added Tax (VAT) if provided by USPs but not if provided by competitors. Such distortions are inconsistent with the goals and policies of the Postal Directive, which seeks to foster ‘full market opening’ and prohibit the granting ‘special rights’ in the provision of postal services.[622]

Since 2000, the Commission and several Member States have sought unsuccessfully to develop a political consensus supporting reform. As the Belgian presidency noted in 2010, repeal of the VAT exemption for postal services of the USP ‘re-establishes the fundamental principles on which the VAT system is based (tax levied as generally as possible) and puts an end to distortion of competition in the postal sector’. Earlier this year, an extensive report for the Commission by Copenhagen Economics came to a similar conclusion. Alternatives which are less distortive than the current system but which stop short of outright repeal have also been proposed, e.g., proposals to extend the exemption to all postal operators or to limit the VAT exemption to a specified minimum level of universal services. These, too, have failed to gain sufficient political support.

In our view, in a market in which all operators are competing on essentially equal terms, an exemption from VAT that applies to one postal operator and not its competitors should be considered a ‘special right’ as that term is used in the Postal Directive. Full implementation of the Third Postal Directive therefore implies that Member States should repeal the VAT exemption for public postal services. However, whether Member States are *obliged* to do so as a matter of law raises a host of technical legal questions which lie beyond the scope of this study (and concerning which we offer no opinion). Nonetheless, we note that the practical feasibility of subjecting postal services to VAT has been demonstrated by Iceland, Norway, Sweden, and Switzerland — all of which already apply VAT equally to all postal services. And the economic feasibility of extending VAT to postal services across the EU has been examined in great detail and appears to be manageable. We therefore agree with the Commission and many other observers in recommending that Member States should reconsider repeal the VAT exemption for postal services or, at a minimum, revise the exemption so as to eliminate distortions in the supply of competitive postal services.

**622** See section 2.2.5 above.

### 4.6.2 Competitive neutrality in the application of customs laws

Like VAT laws, EU customs laws have historically applied unequally to public postal operators and to competing private operators. Here, too, the competitive distortions caused by unequal application of laws have long been recognised. While the Postal Directive's goal of full market opening implies competitive neutrality in the application of customs law no less than VAT law, the legal posture and practical problems are significantly different.

As noted in Chapter 2, the EU has resolved the primary obstacle posed by EU law by adopting in 2008 a Modernised Customs Code that is a competitively neutral with respect to the public and private postal operators.[623] Assuming that the recast MCC is adopted by European Parliament and Council without change this respect, the basic issue will be how put into effect the principle of commercial neutrality taking into account (1) the obligation of Member States under the Universal Postal Convention and (2) the practical capabilities of foreign public postal operators. A strategy for dealing with such issues needs to be developed as part of the implementation the MCC, a process that is presently forecast to be legally completed between December 2013 and March 2017.[624]

As described in Chapter 2, all Member States are signatories to the 2012 Universal Postal Convention. This Convention and associated Regulations adopted by the UPU's Postal Operations Council provide that signatories will provide simplified customs procedures for the clearance of letter post and parcel post conveyed by a 'designated operator'. The Convention also exempts designated operators from liability under customs law. The customs provisions of the Convention do not apply to EMS shipments conveyed by public postal operators. While the UPU Convention does prohibit EU Member States from giving private postal operators the same simplified procedures and legal immunity available to public postal operators, the practical reality is that in an age of heightened security concerns, no Member State will be willing to apply UPU customs procedures to private operators.

The question, then, is to what extent Member States' participation in the 2012 Universal Postal Convention poses an obstacle to implementation of the principle of commercial neutrality towards postal operators as adopted in the MCC? As a legal matter, the primacy of EU law appears clear. All Member States are obliged to implement the acts of the EU.[625] Nonetheless, as a practical matter, in implementing the MCC, the EU may

---

**623** Section 2.2.6.

**624** European Parliament, *Implementation of the Modernised Customs Code* (2012), p. 10.

**625** Article 4(3) TFEU. Moreover, upon signing the Convention, all EU Member States jointly declared that, 'The delegations of the member countries of the European Union declare that their countries will apply the Acts adopted by this Congress in accordance with their obligations pursuant to the Treaty establishing the European Union and the General Agreement on Trade in Services (GATS) of the World Trade Organization'. Non-EU EEA Member States made a similar declaration. UPU, 'Final Decisions of the 2012 Doha Congress,' p. 99. However, the legal effect of this declaration is uncertain. See WIK-Consult and J. Campbell, *External Dimension Study* (2010), p. 173.

wish to consider taking into account what amounts to pledges of Member States to give preferential customs treatment to postal items shipped to the EU by foreign public postal operators.[626] At the same time, the EU needs to balance such considerations against the EU's own institutional interest in having acts of the EU implemented according to EU law, the general public interest in undistorted competition in trade to and from the EU, and the rights of private operators to fair treatment.

A second practical consideration is the capacity of foreign public postal operators to comply with EU customs regulations. When finally adopted, regulations implementing the MCC are likely to require a high level of advanced and correctly entered electronic data. Compliance may be beyond the capacity of public postal operators in some developing countries.

Taking these factors include account, as well as the Commission's focus on parcel delivery services and e-commerce, it appears that a strategy for adopting introducing the MCC's principle of competitive neutrality into to EU customs should include some or all of the following optional elements:

1. The MCC should apply the principle of competitive neutrality to customs treatment of all EMS and express shipments imported and exported from the EU as soon as the MCC becomes effective. EMS shipments are not covered by Universal Postal Convention.

2. The EU should focus first on requiring competitive neutrality in the customs treatment of *parcels* shipped between the EU and *industrialized countries*. Parcels (including 'small packets') are more important for e-commerce than letters and documents, and the public postal operators in the industrialized countries may be reasonably expected to have or develop the electronic capabilities required by MCC implementing regulations.[627]

3. A second priority should be achieving competitive neutrality in the customs treatment of *parcels* shipped between the EU and developing *countries such as China and India* which are (or will soon be) major exporters of e-commerce items to the EU.[628]

4. The EU should seek to coordinate the positions of Member States in respect to work on customs issues at the UPU.

---

**626** In agreeing to the customs provisions of the Universal Postal Convention, Member States may be acting contrary to the principles of EU law, but they may still be obligated as a matter of international law under the principles of the Vienna Convention on the Law of Treaties. As noted in section 2.4.1, questions about conflicts between international law are beyond the scope of this study. See also WIK-Consult and J. Campbell, *External Dimension* (2010), pp. 170-74.

**627** See discussion of the Transatlantic Trade and Investment Partnership negotiations, section 4.4.4, above.

**628** See discussion of the Trade in Services Agreement negotiations, section 4.4.4, above.

At a still more general level, we suggest that the goal of EU customs policy toward postal shipments — in the future, primarily relatively low value parcels — should be to facilitate such shipments as well as implement competitive neutrality. The goal should be a simple, fast, inexpensive, yet effective, customs controls for all postal parcels. In the early decades of the twentieth century, the UPU developed simple and inexpensive customs declaration documents and procedures that are uniform for almost all countries in the world but lack the electronic data handling capabilities and high levels of accuracy needed to meet modern security needs. In recent decades, private integrated express companies have developed procedures to capture and forward electronic customs data that permit rapid customs clearance with almost complete accuracy, but these systems are comparatively expensive because they lack the simplicity and uniformity of the UPU approach. The principles of the MCC and the initiatives outlined above could lay the groundwork for new approach to towards the clearance of relatively low value parcels that is competitively neutrality and uniform in all countries. The positions of EU Member States at the UPU in regard to customs procedures should be closely coordinated with the position of the EU Member States at the World Customs Organisation and in trade negotiations relating to postal services as well as with the development of the EU's own customs policies.

### 4.6.3 Limit anti-competitive conditions on authorisations

Chapter 2 describes the potential for attaching too restrictive conditions to authorisations granted to postal operators.[629] Article 9(2) of the Postal Directive provides that authorisation may include conditions which 'if necessary and justified, impose requirements concerning the quality, availability and performance of the relevant services'. Experience suggests that conditions relating to 'quality, availability, and performance' may in some cases be attached to an authorisation for the purpose of handicapping the ability of the authorised postal operator to compete with the USP. Such a purpose appears incompatible with the overall purpose of the Directive. Otherwise, using restrictive conditions on authorisations, a Member State could use Article 9 to effectively recreate the reserved area that Article 7 abolishes.

It appears to appropriate, therefore, to provide clearer limits on the extent to which conditions relating to quality, availability, and performance which may be attached to authorisations.

- One solution may be limit such conditions to an authorisation granted to a postal operator that is also designated as a USP under Article 4. This approach effectively puts conditions relating to quality, availability, and performance on the

**629** Section 2.2.2.2, above.

same footing as conditions imposing universal service obligations, which 'may only be imposed on designated universal service providers'.[630]

- A second solution would be to state more clearly the permissible grounds for attaching conditions relating to quality, availability. and performance. For example, such conditions might be related to only those cases considered 'necessary and justified' by the need to implement the user protection provisions of Article 19.

## 4.7 Compliance and statistical transparency

### 4.7.1 Standardised market data

With the addition of Art. 22a, the Third Postal Directive introduced the obligation of Member States to ensure regular collection of market data from postal service providers. This obligation serves two purposes: to ensure conformity with provisions of the Directive or related decisions, and for statistical purposes. However, in the course of this study it became obvious that publicly available data on European postal markets are inadequate mainly for two reasons.

First, there are gaps in the data collection authority of NRAs in EU Member States even though all NRAs claim to have fully implemented Article 22a. In a few Member States, NRAs are either not authorized to collect market data for non-universal services on compliance with the Directive, or they do not collect data on non-universal services in fact. For statistical purposes, the picture is even less unanimous. While only Austria does not collect market statistics from any operator (including the USP), four countries in the EU/EEA area collect market statistics only from their USPs.

The second reason for the inadequacy of publicly available postal market data lies in the different definition of compliance and statistical data. An example shall serve to illustrate this. Most NRAs annually publish letter mail volumes. Yet the services (including weight limits) comprised in letter mail volumes differ substantially. Some countries collect data on the licensed area or even the whole postal market, while others monitor universal services (with the described implications of collecting data from universal and non-universal service providers). For example, letter mail volumes published by NRAs may include, in some Member States, bulk advertisements, whereas these are not included in others. As long as NRAs do not clearly state which services are covered by market statistics, the overall comparability among EU/EEA countries is considerably limited.

**630** In our view, however, it appears better to impose conditions designed to protect universal service as part of the designation process or public procurement contract. See WIK-Consult, *Role of Regulators* (2009), pp. 287-88.

Furthermore, full liberalization of postal markets in the EU enhances the need to monitor postal markets rather than USPs. This applies to letter mail as well as to parcel markets. The booming e-commerce market may enable USPs to at least partly compensate declining letter mail revenues by increasing parcel volumes. Moreover, the targets for participation in national and cross-border e-commerce set out in the Digital Agenda for Europe require consistent and comparable market data across Member States.

These gaps in market monitoring may result in serious misinterpretations of market developments. Against the background of changing communication habits, postal market monitoring seems more important than ever in order to ensure the regulatory framework for postal markets is apt to foster an efficient and viable postal sector in the future.

*Definition of minimum requirements for collection of postal market data:* One approach to improve comparability of postal market data could be to define minimum requirements for data collection in the Directive. These requirements could specify the scope of market data to be collected by NRAs by defining for which elements of postal markets data should be collected, especially: (1) services, (2) weight limits, (3) providers (designated USPs as well as competitive providers of the services defined) and (4) kind of information (e.g. volumes, revenues, quality indicators).

*Standardised data collection:* A second approach might be to provide a standardised template for collecting postal market data by NRAs. The template would include a concise clarification of the services and providers that should be covered by each indicator. The template should be developed based on best practices of NRAs and for the purposes defined in Art. 22a of the Directive. It could best be developed collaboratively by the ERGP and the Commission.

The first approach (definition of minimum requirements) has the advantage of limiting the administrative burden on both NRAs and USPs. NRAs would have to adapt the minimum requirements to their information needs and further specify which data is to be collected. However desirable it may seem to limit the administrative burden, this approach bears the risk of being applied too differently by Member States to improve comparability. A standardized set of data applied equally by NRAs in all Member States would ensure comparable and reliable postal market data, and thus support more informed policy making.

### 4.7.2 Standard reports on implementation of the Directive

The present study provides the basis for the Commission’s next report on the implementation of the Postal Directive, as required by Article 23 of the Directive. NRAs have to contribute every few years to similar studies aiming at preparing implementation reports. Much of the information collected in this study is therefore similar to information

collected in previous studies. However, survey questionnaires for NRAs are irregularly timed (every few years only), and questions on the same issue are phrased differently. This may result in misunderstandings about the questions as well as in unnecessary work and complexity for NRAs.

In order to improve comprehension by NRAs and to generate reliable information which is consistent over time, it may be reasonable to develop a standard format for regular reports on regulatory activities by NRA. On the one hand, this would reduce confusion due to different versions of questions and thus help NRAs to provide correct answers. On the other hand, the information gathered through standardized annual reports on NRA activities and implementation status would be easily comparable.

Standardised surveys on postal regulation, NRA activities and implementation of the Directive should be specified in terms of content and timing. As regards content, a standardized survey could cover either *major aspects* or provide a *detailed overview*. A survey covering major aspects would be limited to those elements of the Directive which are judged most important. Naturally, the assessment of most important elements may vary in the course of time, especially in a changing market development. For the purpose of analyzing regulatory and market developments, it is important to have time series available in order to identify trends. Detailed reports would facilitate analysis of changes in regulatory implementation over time and benchmarking between NRAs or Member States. By improving the transparency of regulatory implementation, NRAs and Member States could be encouraged to adopt best practices or, at a minimum, to correct lapses in regulatory coverage. A detailed overview therefore seems to contribute better to the goal of collecting reliable information and to form a better basis for decisions by regulators and Commission.

Standardised information on NRA activities could either be collected *annually* or *every four years, coordinated with the application report required by the Directive*. Although annual surveys would impose a higher burden on NRAs, regulators would benefit from becoming increasingly familiar with the questions every year. Annual surveys could trigger a learning process, both in terms of more efficient provision of information as well as improved identification and understanding of developments by NRAs themselves. Information collected in annual surveys should be organised in a database serving as a starting point for further analysis.

## 4.8 Employment policies

The role of the postal sector in labour markets, and employment conditions in the postal sector have changed considerably in recent years.

First, there have been slight reductions in total sector employment. Reasons for these reductions differ from Member State to Member State but generally include loss of volume in letter markets; modernisation and efficiency improvements at universal services providers; competitive pressure from electronic substitutes; and advances in technology. On the positive side, additional employment was created by parcel operations that benefit from growth in e-commerce deliveries. Both trends are expected to continue but is not clear today in how far increases in parcel employment will fully compensate losses in the letter business.

Second, alternative operators are becoming relatively more important compared to incumbent postal operators. These new players include delivery firms for parcels, express, and letters and outsourcing and worksharing partners for the postal industry in printing, transport, IT, and logistics. The wider sector is more complex, and practices for representation of workers and collective bargaining just about to develop. Overall, it appears that social partners in the postal sector have managed change responsibly so far. The key future challenge will be to adjust to the more complex environment and integrate new players in collective bargaining. At EU level, a move towards wider sector representation may be to invite competitive operators (that delivery letters and/or parcels), to the Social Dialogue Committee.

Third, there is increasing pressure on postal operators, both for letters and parcels, to improve efficiency and compete on price. In some Member States, this has led to a wider use of more flexible labour contracts (enhanced outsourcing or sub-contracting, and more fixed-term and part-time contracts), and to instances of wages and working conditions that are below any politically desirable standard, and sometimes even below legal minimum standards. In the medium term, such insufficient working conditions are a problem not only for postal workers but also the for sector generally, as the bad image of poor working conditions can have a negative effect on demand from postal customers, and make postal employers less attractive in the labour market, thus creating difficulties in hiring new employees.

As regards political tools for improving labour conditions, we think the challenges for postal employment are not wholly different from other sectors, and possible solutions will need to be taken in general labour legislation, according to the needs of specific Member States. This study has also reviewed the attempts of several Member States to protect or secure labour conditions for the postal sector in postal legislation, or in conditions for authorisations (see section 3.4.4). All in all, these attempts have not turned out very successful, at least so far: they have not improved working conditions effectively, and postal NRAs, given their staff, skills and experience, do not appear as

the most appropriate authorities to control labour conditions and enforce legal standards. In different Member States, more successful policy examples included voluntary collective bargaining procedures and general labour legislation (e.g. general minimum wages or decrees on how to cope with per-piece wages).

Finally, our research has been challenged by a lack of transparency and relevant statistics about postal sector employment. It appears that the mandates and resources of postal NRAs to collect employment data for the whole sector (and not just USPs) would need to improve. Alternatively, it may be possible to empower statistical offices to collect better statistics for the postal sector if sector codes for postal operators were clarified.[631]

## 4.9 Institutions and resources for postal regulation

### 4.9.1 Separation of policy making, regulatory functions, and ownership functions

Authority to create government offices and define their functions is particularly within the competence of each Member State. However, the Postal Directive has always drawn a few basic bright lines regarding institutional organization at the Member State level. From the beginning, the Directive has required that the NRA must be 'legally separate from and operationally independent of the postal operators'. The Third Postal Directive added the further requirement that the NRA must be structurally separated from 'activities associated with ownership and control' of the government-owned postal operator (if any).[632]

The present study indicates that some Member States have separated policy making, regulation, and ownership functions more clearly than others.[633] In particular, the chief policy maker, the postal minister, appoints the heads of the NRA and public postal operator in about one-third of Member States. As the postal sector has become more and more of a competitive sector, it appears desirable that Member States should place more emphasis on separating policy making for the sector from advancement of the public postal operator.

For the future, therefore, it may be appropriate for Article 22 to require structural separation between all three of the primary governance functions: policy making,

**631** The present sector NACE classification distinguishes: 53 Postal and courier activities; 53.1 Postal activities under universal service obligation; 53.2 Other postal and courier activities. However, many postal operators appear to report their business, and thus to appear in statistics for related transport or logistics sectors. For an explanation of our concerns on data quality, see section 4.3.1.

**632** Although perhaps implied, Article 22 of the Postal Directive lacks a clear requirement that 'Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently'. Directive 2002/21 (Framework Directive), Article 3(3). Adding such a requirement to Postal Directive would seemingly reinforce the independence of the NRA.

**633** Section 2.2.2.2, above.

regulation, and ownership. Moreover, it might be desirable to provide that the head of one authority should not be authorized to appoint or remove the heads of another authority. Such institutional reforms could be accompanied by (and thus reinforced by) transparency. Borrowing from the electronic communications directives, each Member State could be required to publish in easily accessible form a complete list of the tasks to be undertaken by each authority exercising policy making, regulatory, or ownership authority in the postal sector.[634] Inter alia, a statement of authorities could include a clear statement of the authorities responsible for development of the acts of Universal Postal Union.[635]

### 4.9.2 Authority and resources of NRAs

Analysis of NRA *resources* has shown substantial variations among Member States. For example, several NRAs in very small markets (i.e., markets accounting for 0.2 per cent or less of the combined EU/EEA postal markets) are staffed similarly or even better than some NRAs in medium-sized markets (i.e. markets accounting for 1 to 5 per cent of combined EU/EEA postal markets). On the one hand, differences in NRA resources are natural and to some extent also reflect different stages of postal market development, and different administrative cultures and traditions. In highly developed postal markets with relatively strong competition and high postal volumes per capita more NRA resources may be needed to deal with e.g. price control, interoperability and access issues. Less resources may be necessary in markets that have only recently been liberalised, are characterised by low postal volumes and dominated by an incumbent operator. On the other hand, NRA resources may be especially important in the latter countries in order to ensure e.g. efficient competition, cost-oriented tariffs, and non-discrimination.

Below average resources do not always result in reduced regulatory activity (good examples in this respect are e.g. Irish and Slovenian NRAs). Critical situations may arise in those countries where below average resources of NRAs meet little regulatory activity (compared to authorities regulating similar-sized markets). The most obvious example for this might be Denmark. It therefore seems desirable to *establish guidelines defining a minimum resources of postal NRAs*. Rather than making detailed requirements on staffing and budget potentially limiting the scope for adaption to the national needs, the guidelines should focus on two major aspects of NRA resources:

- budget for postal regulation: a minimum threshold for the postal budget of the NRA should be defined in terms of percentage of postal market revenues under regulation;

**634** Directive 2002/21 (Framework Directive), Article 3(4).
**635** See section 2.4.1, above.

- professional staff for postal regulation: to ensure regulatory expertise, a minimum for professional regulatory staff (economists and lawyers) could be defined.

NRAs across Europe also have varying *enforcement authority*. The ability to enforce orders in case of non-compliance by a postal operator is essential for effective regulation of postal markets. If a regulator lacks credibility in enforcing its orders, postal operators may consider this strategically. In this report, enforcement authority is considered adequate if NRAs may levy fines and apply for a court order. NRAs lacking one or both of these options should be vested with more robust enforcement powers.

Potential measures to achieve an improvement of authority include first *analysis of best practices* among NRAs, for example by the ERGP. Transparency on best practices may increase (political) awareness on the shortcomings of the national postal laws concerned.

Second, *guidelines for minimum requirements on enforcement authority* might be developed based on best practices. The guidelines should focus on basic powers of NRAs necessary to handle cases where operators fail to comply with an order of the NRA. These guidelines should develop recommendations on enforcement powers of the NRA if postal operators fail to comply with the postal law, especially conditions under which NRAs may (1) prescribe a remedial tariff or practice, (2) levy a fine, (3) request an order from a court.

# 5 Recommendations

The economic and social role of postal services has been changing rapidly and fundamentally over the last two decades. In the most industrialized countries, paper-based communications are in steep decline while demand for parcel delivery services is rising steadily with continuing development of e-commerce, just-in-time production techniques, and global supply chains. For the postal sector as a whole, the centre of gravity has shifted dramatically from letters and documents to parcels. The organizational paradigm has moved inexorably from that of a national, government-owned postal administration providing the basic delivery services required by society to a system of interdependent local and regional undertakings that both compete and cooperate with one another. This transition began in earnest in the 1990s and will likely take another decade or two to unfold fully. Nonetheless, the postal sector has changed so much since 1997, the year the Postal Directive was adopted, that it is time for policy makers to think again about the basic architecture of postal regulation in the EU.

The present study reviews regulatory (chapter 2) and market (chapter 3) developments in the European Union between 2010 and 2013 and seeks to place these developments in the larger context of European postal reform and the changing nature of the postal sector (chapter 4). Taking into account both lessons learned from the past and probable future developments, we suggest that policy makers may wish to consider the following options as possible elements in further modernisation of the regulatory framework for postal services.

**1. Future definition and regulation of universal service**

1.1 Adopt a more flexible definition of universal service at the EU level while continuing to oblige Member States to ensure universal postal service according to EU-wide principles.

1.1.1 EU-wide principles could include affordability and ubiquity while allowing Member States to adapt parameters such as service quality (or related delivery frequency) to the needs of users.

1.1.2 Alternatively, EU-wide standards could require Member States to define the universal service obligation according to specified parameters (such as transit time targets or related delivery frequency) while allowing Member States to define the numerical values of such parameters.

1.2 Limit specific regulation of the prices and services of universal services to those universal services which are supplied under conditions of market dominance and which cannot be reliably provided by reliance on market forces.

1.2.1 Where universal services which satisfy the criteria of the universal service obligation are reliably provided by postal operators operating under conditions of effective competition, imposing specific regulatory controls

on prices and services on a single postal operator (the USP) is unfair to that provider and incompatible with the goal of full market opening.

1.2.2 Where, in the judgement of the NRA, universal services which satisfy the criteria of the universal service obligation can be reliably provided by a market dominant postal operator acting in response to market forces (i.e., its commercial self-interest), it may be sufficient for the NRA to use ex post regulatory controls to ensure that prices and services comply with the requirements of the Postal Directive.

1.2.3 Where, in the judgement of the NRA, there is a reasonable risk that universal services which satisfy the criteria of the universal service obligation will not be reliably provided by a market dominant postal operator acting in commercial self-interest, then ex ante or price cap regulatory controls over prices and services may be appropriate.

1.2.4 In evaluating whether a postal operator is market dominant in the delivery of paper-based communications and/or is reliably guided by market forces, the NRA should take into account competition from electronic communications as well as from other physical delivery services where appropriate.

1.3 Limit the designation of postal operators as universal postal operators (USPs) to specific circumstances in which designation is objectively required and proportional to the universal service objectives to be attained.

1.3.1 Under EU law, designation of a postal operator as a universal postal operator may nullify principles mandating equal application of the laws to competitors and thus thwart development of a truly liberalised postal market.

1.3.2 In principle, designation of universal postal operator, like public procurement, should be employed to ensure universal service only when proportionate and objectively justified.

## 2. Regulation of postal services outside the scope of universal service

2.1 Member States should ensure that NRAs have adequate authority to prevent USPs that are market dominant in the provision of non-universal postal services from using anti-competitive means to eliminate lawful competition.

2.1.1 Authorising the NRA to block elimination of competition outside the universal service area by anticompetitive methods appears justified by several considerations including the NRA's special expertise in postal accounts and markets and the inability of ex post controls alone to preserve the public benefits of active competition.

2.1.2 The need for NRA authority to prevent elimination of competition outside the universal service area by anticompetitive methods has been

exacerbated by a trend towards reduction in the scope of the universal service obligation which has shifted some market dominant services of the USP from within the universal service area (where the NRA could exercise effective control) to outside the universal service area.

2.2 Provisions in the Postal Directive which are intended to protect fair competition should apply to postal services outside the universal service area.

2.2.1 Provisions of the Postal Directive requiring market dominant USPs to provide transparent and non-discriminatory access to special tariffs (Article 12, indent 5) should apply to market dominant postal services of the USP outside the universal service area.

2.2.2 The authority of the NRA to require USPs to maintain regulatory accounts (Article 14) should apply to market dominant postal services of the USP outside the universal service area as well as to market dominant services within the universal service area.

2.2.3 The obligation of Member States to provide transparent and non-discriminatory access to the postal infrastructure where necessary to protect the interests of users and/or to promote competition (Article 11a) should not be limited to universal services but should apply to all postal services.

2.3 Where Member States choose not to charge the NRA with ensuring compliance with competition rules in the postal sector, Member States should ensure that in cases of urgency due to the risk of serious and irreparable damage to competition, and on the basis of a prima facie finding of infringement of the competition rules or a history of past infringements for which there is a plausible risk of reoccurrence, the NRA can order such interim measures as may be objectively necessary to preserve existing competition.

2.4 At the same time, for economic and historical reasons, the potential for anticompetitive behaviour appears higher is some segments of the postal sector than in others so that particular regulatory vigilance may be more appropriate in, for example,

- letter and documents compared to parcel services;
- business to consumer (B2C) markets compared to business to business services (B2B);
- cross-border services compared domestic postal services.

## 3. A modern institutional framework for cross-border postal services

3.1 The Commission should develop a new notice on the application of the competition rules in so far as they affect cross-border postal services. Such a notice could facilitate further development of cross-border postal markets both within the EU/EEA and between the EU/EEA and other countries. The notice should also clarify such issues as

- the limitations, if any, on cooperation among organizations of public postal operators such as EMS Cooperative, the E-Parcel Group, and the Kahala Posts Group and
- the legal relationship between EU competition rules and the acts of the UPU.

3.2 Implementation of Article 13 needs to be strengthened by requiring greater transparency of terminal dues relating to cross-border intra-EU/EEA services and by adding procedures for Commission review, and perhaps approval, of multilateral agreements between USPs relating to market dominant postal services.

3.3 The Commission should actively coordinate the positions of Member States at meetings of UPU committees leading up to the 2016 Istanbul Congress where such positions particularly affect the development of EU cross-border parcel markets (intra-EU and extra-EU). Issues could include

- terminal dues for cross-border small packets (parcels weighing 2 kg or less),
- a more market-oriented approach for UPU actions, and
- a simplified global approach to customs treatment of low value e-commerce parcels available to all postal operators.

3.4 The EU should consider using recently launched trade negotiations between the EU and US — seeking a Transatlantic Trade and Investment Partnership (TTIP) — to develop a more liberal and cost-oriented exchange of postal services between the EU and US.

3.4.1 The starting points for such an agreement could be (1) the 2006 common position of the EU and US in the (now stalled) Doha Round of the World Trade Organisation and (2) subsequent legislative reforms in both the EU and US that appear to be converging towards a more liberal and cost-oriented policies for international postal services.

3.4.2 Agreement between the EU and US on a liberal and cost-oriented bilateral exchange of postal services could also serve as the basis for a powerful joint position in a second set of ongoing service-related trade negotiations, the Trade in Services Agreement (TISA), a negotiation among 48 countries.

## 4. Improved application of the competition rules

4.1 The Commission should update its 1998 Notice on the application of competition rules to the postal sector in light of regulatory and market developments. In particular, the Commission could clarify the treatment of postal rebates and of cost standards in light of recent case-law and its 2008 Priorities Guidelines in Applying Article 102 TFEU.

4.2 Competition authorities at both EU and Member State levels should deepen their cooperation with NRAs when enforcing EU competition law.

## 5. Resolving potential restraints on competition

5.1 In light of the Third Postal Directive's commitment to full market opening and abolition of special rights in the provision of postal services, the European Parliament and Council should reconsider repeal the VAT exemption for postal services or, at a minimum, revision of the exemption so as to eliminate distortions in the supply of competitive postal services.

5.2 Pursuant to the principles of the Modernised Customs Code (MCC), the EU should move towards a more equal application of EU customs laws towards all postal operators and all postal items imported into or exported from the EU, but it should do so in stages that take into account fully, competitive fairness, the practical capabilities of foreign postal operators, and the relative importance of different trade flows.

5.2.1 First, the EU should enforce the principle of competitive neutrality in customs treatment to all EMS and express shipments imported and exported from the EU as soon as the MCC becomes effective.

5.2.2 Second, the EU should introduce competitive neutrality in the customs treatment of parcels shipped between the EU and other industrialized countries. Parcels (including 'small packets') are more important for e-commerce than letters and documents, and the public postal operators in the industrialized countries may be reasonably expected to have or develop the electronic capabilities required by MCC implementing regulations.

5.2.3 Third, the EU should introduce competitive neutrality in the customs treatment of parcels shipped between the EU and developing countries, such as China and India, which are (or will soon be) major exporters of e-commerce items to the EU.

5.2.4 In addition, the EU should seek to coordinate the positions of Member States in respect to work on customs issues at the UPU.

5.3 Article 9 of the Postal Directive should be revised to clarify that Member States may not include in authorisations for postal operators conditions which relate to

'quality, availability, and performance' that have the effect of restricting their ability to compete with the universal service provider.

**6. Developing a coherent EU approach towards regulatory accounts, reports, and market statistics**

6.1 The ERGP should be given a larger role in defining parameters for regulatory accounts that are clearer, more flexible, and more economically sophisticated. Experience suggests that the fully distributed cost allocation system prescribed by Article 14 is overly rigid and poorly understood by NRAs; the resulting regulatory accounts have not served well the needs of NRAs, USPs, or EU policy.

6.2 The Commission and the ERGP should define standardized annual reports on the status of regulatory implementation by NRAs in the Member States.

6.2.1 Annual reports will facilitate comparisons between Member States and from year to year.

6.2.2 For basic regulatory information, annual reports should be much easier for NRAs to complete than periodic ad hoc surveys.

6.2.3 Annual reports will also have the desirable effect to establishing common criteria for what NRAs may be expected to achieve in implementing the Directive.

6.3 The ERGP and the Commission should collaboratively define standard statistical accounts for the collection of basic market data from all postal operators.

**7. Employment policies**

7.1 NRAs should be encouraged, and given authority, to collect employment data for the whole sector regularly.

7.2 Labour regulations should be enforced by labour market authorities, not postal NRAs. Attempts of Member States to protect or secure labour conditions for the postal sector in postal legislation, or in conditions for authorisations have not turned out successful so far. NRAs do not appear well equipped to control labour conditions. More successful policy examples included voluntary collective bargaining procedures and general labour legislation (e.g. general minimum wages or decrees on how to cope with per-piece wages).

7.3 Social partners should work to integrate new players in collective bargaining. At Community level, inviting competitive operators to the Social Dialogue Committee may widen sector representation.

7.4 Postal operators and policy makers should proactively address problems with insufficient working conditions in the interest of postal workers and the general appearance of the sector to its customers.

## 8. Institutional improvements in the postal sector

8.1 The Postal Directive should be revised to require clearer structural separation between the three primary Member State authorities governing the postal sector: policy making authorities (one or more ministries), regulatory authorities (one or more National Regulatory Authorities), and the ownership authority (if government owns a postal operator). Structural separation between the NRA(s) and postal operators is already required (Article 22). Separation of policy making and ownership authority is strongly implied by the current Postal Directive but may be further clarified.

8.2 The Commission and the ERGP should consider issuing guidelines for the minimum financial resources, staffing requirements, and enforcement authority appropriate for implementation of the Postal Directive.